SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

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[Caption omitted.]

In The District Court of the United States for the Southern District of Illinois, Southern Division

Civil Action File No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Complaint

Filed June 1, 1942

Plaintiffs, Wabash Railroad Company, Illinois Central Railroad Company, and Illinois Terminal Railroad Company, corporations, bring this complaint against the United States of America and the Interstate Commerce Commission (hereinafter referred to as the "Commission"), for the purpose of setting aside and annulling a certain order, more particularly hereinafter described, issued by said Commission on the 6th day of May, 1941, in proceedings known as Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois, and A. E. Staley Manufacturing Company Terminal Allowance, Ex Parte No. 104, Practices of Carriers Respecting Operating Revenues or Expenses, Part II, Terminal Services.

4. This action arises under, the United States is made defendant herein, and the jurisdiction of this Court is conferred by provisions of Title 28, U. S. Code, Sections 41 (28), 43, 44, 45 (a), 46, 47, and 48, as hereinafter more fully appears.

II

Plaintiff Wabash Railroad Company (successor to Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers, Wabash Railway Company), is a corporation organized and existing under the laws of the State of Ohio, and having its principal office at St. Louis, Mo.; plaintiff Illinois Central Railroad Company is a corporation organized and existing under the laws of the State of Illinois, having its principal office at Chicago, Ill.; plaintiff Illinois Terminal Railroad Company is a corporation organized and existing under the laws of the State of Illinois, having its prin-

cipal office at St. Louis, Mo. Each of the said plaintiffs is engaged in the transportation of property as a common carrier by railroad in interstate commerce, and as such carrier so engaged is subject to the Interstate Commerce Act, Title 49, U. S. Code, and Acts supplemental thereto and amendatory thereof. The lines of railroad owned and operated by each of the said plaintiffs traverse the area included within the southern district of Illinois, and each of said plaintiffs owns and operates lines of railroad which reach and serve the City of Decatur, Macon County, Illinois, in said district.

III

In the City of Decatur, Illinois, in said southern district of Illinois, a certain Illinois corporation, A. E. Staley Manufacturing Company (hereinafter called the "Staley Company"), operates and continuously for more than twenty years last past has operated a manufacturing plant for grinding and manufacturing the products of corn and soybeans, which said plant is reached by and accessible to the railroads of the plaintiffs. The said Staley Company has received in the past, is now receiving, and will receive in the future, numerous carload shipments of corn, soybeans, and various materials; and it has shipped out in the past, and is now shipping, and will continue in the future to ship, carloads of grain, soybeans, and various products of its plant, such carload shipments moving from and to points in other states of the United States over the lines of plaintiffs and connecting carriers, in interstate commerce.

IV

The Commission, by its order of July 6, 1931, in Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, on its own motion entered upon a proceeding of inquiry and investigation into and concerning practices of carriers by railroad subject to the Interstate Commerce Act which affected operating revenues or expenses. Part II of said proceeding of investigation dealt with the terminal services of Class I carriers by rail.

The Commission, followed extended hearings dealing with the terminal services at particular industries and plants, issued its report on May 14, 1935, in Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, 209 I. C. C. 11, in which the Commission announced certain principles concerning the payment of allowances

by railroads to industries for performing spotting service at their industrial plants or the performance of such service by railroads in lieu thereof.

6 V

Among the industrial plants, terminal services at which were investigated by the Commission, was the plant of the Staley Company at Decatur, Ill. (hereinafter referred to as the "Staley Plant"). At the time of the hearings before the Commission involving terminal services at the Staley Plant (November, 1931, and September, 1932), these plaintiffs were paying to the Staley Company allowances for services performed by the Staley Company in moving cars between certain interchange tracks at the Staley Plant and points of loading and unloading within the said plant.

The Commission, by Division 3, held in its 55th Supplemental Report in Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services—A. E. Staley Manufacturing Company Terminal Allowance (May 22, 1936, 215 I. C. C. 656), that the interchange tracks at the plant of the Staley Company described in the record were reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which these plaintiffs were compensated in their line-haul rates began and ended at said points; and that the services performed by the Staley Company beyond those points were a plant service. The Commission further held that, by the payment of an allowance to the Staley Company for services performed beyond those points on interstate shipments, plaintiffs provided the means by which the Staley Company enjoyed a preferential service not accorded to shippers generally, and refunded or remitted a portion of the charges or

7 rates collected or received as compensation for the transportation of property, in violation of Section 6 (7) of the Interstate Commerce Act.

The said order of the Commission of May 22, 1936, in the A. E. Staley Manufacturing Company Terminal Allowance case, was postponed from time to time until June 15, 1937. All allowances by these plaintiffs to the Staley Company, however, were discontinued on June 23, 1936, on which date the Staley Company ceased to perform switching services at its plant. The spotting of cars for loading or unloading at points within the Staley Plant was performed by the Receivers of the Wabash Railway Company beginning June 30, 1936.

On November 15, 1937, plaintiffs herein, together with the two other railroads serving Decatur, the Pennsylvania Railroad Company and the Baltimore & Ohio Railroad Company, for the purpose of further compliance with the findings of the Commission in the said report of May 22, 1936, established a charge of $2.27 per car to cover spotting services within the Staley Plant; i. e., services embraced in the movement of cars between the interchange tracks and points of loading and unloading within the Staley Plant. This charge was later increased to $2.50 per car. The Staley Company filed a protest with the Commission against this tariff charge and asked the Commission to suspend the tariffs that named this charge of $2.27 per car. The Commission, however, declined to suspend the tariffs.

A similar charge was published by the plaintiffs and the other two railroads serving Decatur to apply on intrastate shipments within the State of Illinois. The tariff filed with the Illinois Commerce Commission naming this charge on intrastate shipments was suspended by the Illinois Commerce Commission. Following a hearing held on March 22, 1938, the Illinois Commerce Commission, in its report and order of July 26, 1938, found that the assessment of such a charge would result in unjust and unreasonable rates and would subject the Staley Company to discrimination. The Illinois Commerce Commission in its order required these plaintiffs, together with the other two railroads serving Decatur, to cancel the tariff naming the charge for application to intrastate shipments within Illinois. These plaintiffs, therefore, make no charge against the Staley Company for transporting cars containing intrastate shipments between the railroad yards in the City of Decatur and points of loading and unloading within the Staley Plant.

VI

On June 26, 1936, a little more than three weeks after the decision of the Commission on May 22, 1936, in the A. E. Staley Manufacturing Company Terminal Allowance, 215 I. C. C. 656, the Staley Company petitioned the Commission to reopen the proceeding for further hearing on the ground that it contemplated discontinuing the practice of performing itself the switching services at its own plant with a view of creating a new arrangement under which it would expect the railroads reaching Decatur with their own equipment and employes to spot cars for loading and unloading without charge to the Staley Company. The Commission denied this petition on November 9, 1936.

On May 29, 1937, the Staley Company filed another petition with the Commission asking that the proceeding be reopened

for reconsideration or rehearing. The Commission denied this petition on June 8, 1937.

On March 16, 1938, the Staley Company filed still another petition with the Commission in which it repeated its request for reopening, rehearing, and reconsideration. The Commission, by an order dated April 8, 1938, modified by an order of May 4, 1938, reopened the proceeding for further hearing limited to the presentation of evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery, or receipt of cars handled to or from the Decatur, Ill., plant of the Staley Company. The further hearing was held at Chicago on June 27, 1938. A tentative report on the further hearing was proposed on or about November 1, 1938, by Mr. Homer C. King, Special Examiner of the Commission. The Special Examiner, after setting forth in the tentative report the history of the proceeding and describing the changes that had taken place in operating and other conditions connected with the placement of cars for loading and unloading at points within the Staley Plant, recommended that the Commission should find that, since the issuance of the Commission's report of May 22, 1936, in A. E. Staley Manufacturing Company Terminal Allowance, 215 I. C. C. 656, substantial changes had occurred in the methods of spotting cars in the Staley Plant and that the spotting service then being performed was in conformity with the principles announced in the original report of the Commission in Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, 209 I. C. C. 11, and that such service might be performed by the Wabash Railway Company on interstate shipments under its line-haul rates without additional charge.

According to the Commission, an incomplete record resulted from the limited reopening of this proceeding, and on July 29, 1939, the Commission on its own motion again reopened the proceeding for further hearing concerning the operating or other conditions at the Staley Plant with respect to the delivery or receipt of cars handled to or from the Staley Plant at Decatur, including the interchange arrangements with the connecting lines on such traffic and intraplant movements within the Staley Plant.

No action, however, was taken by the Commission towards setting down this proceeding for a further hearing, notwithstanding the fact that the Commission on July 29, 1939, had reopened the proceeding for further hearing. These plaintiffs, having observed the result of the establishment of a spotting charge against the Staley Company for the movement of cars between

the interchange tracks at the Staley Plant and points of loading or unloading within the plant, a charge, moreover, made in addition to the line-haul rates applying to and from the Staley Plant, and bearing in mind that no similar charge had been made or imposed by the Commission against any of the competitors of the Staley Company served by these plaintiffs, reached the conclusion that the continued imposition of this charge on the Staley Company plainly resulted in unreasonable rates and in unjust discrimination and in undue prejudice.

These plaintiffs, therefore, on November 10, 1939, filed tariffs to become effective December 15, 1939, whereby they proposed to cancel the aforesaid charge of $2.50 which was then being collected from the Staley Company for the placement of cars for loading and unloading at points within the Staley Plant, the tariffs specifically providing that loaded cars received and empty cars for loading via these plaintiffs' railroads would be placed for loading or unloading, as the case may be, at the Staley Plant and that the established freight rates for transportation to and
11 from Decatur, lawfully on file with the Commission, included such service. The rule in the tariff published by the Illinois Central Railroad Company is representative of the rule in the tariffs published by the other two plaintiffs and was in words and figures as follows:

"e Placement of cars at the A. E. Staley Mfg. Co., Decatur, Ill.

"Loaded cars received and empty cars for loading, via the Illinois Central R. R. will be placed for unloading or loading, as the case may be, at the A. E. Staley Mfg. Co., the rates for transportation to and from Decatur, Ill., lawfully on file with the Interstate Commerce Commission, including such service."

The tariffs of these plaintiffs providing that the compensation afforded by their established freight rates included the services of placing cars at points of loading or unloading at the Staley Plant were suspended by the Commission on November 21, 1939, under Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill.

VII

Following the suspension of the tariffs of these plaintiffs, referred to in the preceding paragraph, the Commission held a hearing at Decatur, Ill., on April 23–26, 1940, in both I. & S. Docket No. 4736, Switching Charges at Decatur, Ill., and A. E. Staley Manufacturing Company Terminal Allowance, Ex Parte 104, Practices of Carriers, Affecting Operating Revenues or Expenses, Part II, Terminal Services. On May 6, 1941, the Com-

mission made its report in these two proceedings in A. E. Staley Manufacturing Company Terminal Allowance, decided May 6, 1941, 245 I. C. C. 383. The order entered by the Com-
12 mission in the proceeding known as I. & S. 4736, Switching Charges at Decatur, Ill., is in words and figures as follows:

"It appearing, That by order dated November 21, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the schedules enumerated and described in said order and suspended the operation of said schedules;

"It further appearing, That a full investigation of the matters and things involved has been had and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before June 20, 1941, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and that this proceeding be discontinued.

"By the Commission."

The report which is referred to in the foregoing order, and made a part thereof, is reproduced together with the order as Appendix A to this complaint and is entitled A. E. Staley Manufacturing Terminal Allowance, Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, and also embraces I. & S. 4736, Switching Charges at Decatur, Ill.

VIII

Thereafter, on or about June 17, 1941, plaintiffs, Illinois
13 Central Railroad Company and Illinois Terminal Railroad Company, filed with the Commission their petition for vacation of the Commission's aforesaid order of May 6, 1941, in I. & S. Docket No. 4736, Switching Charges at Decatur, Ill., and for rehearing and reconsideration. A copy of said petition is attached hereto and marked Appendix B, and made a part hereof.

On or about June 20, 1941, plaintiff Wabash Railroad Company's predecessor in interest, Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), filed its petition for rehearing and reconsideration and for vacation of the said order of May 6, 1941. A copy of said petition is attached hereto and marked Appendix C, and made a part hereof.

On or about June 17, 1941, the Staley Company filed with the Commission its motion to vacate the aforesaid order and petition for reconsideration. A copy of said motion and petition is attached hereto, marked Appendix D, and made a part hereof.

Thereafter, on July 31, 1941, the aforesaid motions and petitions for vacation of order, for rehearing and reconsideration of proceedings were denied by the Commission.

IX

Each of the plaintiffs serves numerous other plants located on their respective railroads which process grain, including corn and soybeans, and manufacture various products thereof. Such other plants compete with the Staley Company in the sale of corn and soybeans and the various products thereof. At all the competing plants so served, including competing plants located at Decatur, Illinois, which are served by these plaintiffs, or
14 some one of them, without regard to the volume of the traffic or the extent of their industrial trackage facilities, each of the plaintiffs places cars for loading and unloading at points within such plants that are accessible and convenient for such loading and unloading, plaintiffs performing such services under the carload rates applying from and to such plants and without any additional charge therefor. Plaintiffs do not maintain or apply at or exact of any plant served by them which is engaged in processing grain, including corn and soybeans, and manufacturing various products thereof (other than at the Staley Plant), any charge over and above the regularly established freight rates for each movement to or from the points of loading or unloading within the aforesaid plants. Compensation to these plaintiffs for the services connected with the placement of loaded and empty cars at such other plants, competitors of the Staley Plant, is included in the compensation afforded by the established freight rates.

X

Cars of grain consigned to the Staley Company are, in the usual course of business, transported into Decatur over the railroad lines of each of the plaintiffs indiscriminately with numerous cars in the several trains containing grain and other freight consigned to various other receivers at Decatur. The cars containing grain and soybeans are consigned to numerous and divers processors in these commodities at Decatur. These said cars of grain and soybeans are placed upon tracks of the carriers for inspection by the properly authorized authorities and as required by law, and upon the discharge of such duties by such

authorities, said cars are from the point of such inspection
15 upon the tracks so provided by the carriers for such purpose delivered by the carriers to the several consignees in pursuance of the duties imposed by law on such carriers, all of which was and is without direction, control or supervision by either of any of the consignees of such grain and soybeans. Cars containing commodities other than grain and soybeans are delivered to the various consignees at Decatur at their respective plants.

Industrial plants at Decatur ship outbound from Decatur, via the lines of these plaintiffs, numerous shipments of grain, soybeans, and divers other commodities. But these plaintiffs make no charge against any receiver or shipper of freight at Decatur or in the Decatur Switching District, for services connected with the spotting of cars for loading or unloading at the plants of such receivers or shippers of freight at Decatur in addition to the established freight rates, except in the case of cars received by and shipped by the Staley Company.

XI

Plaintiffs and each of them, in establishing their present carload freight rates applicable on interstate shipments moving to and from Decatur, as well as to and from other points on their respective lines of railroad on which are located competitors of the Staley Company, intended and believed that said rates afford compensation for the services of placing cars at reasonable and convenient points for loading and unloading within industrial plants which are accessible to plaintiffs' engines on industrial tracks. And plaintiffs intend and believe that the services now performed in the spotting of cars at points of loading and unloading within the Staley Plant are not beyond the obliga-
16 tions of these plaintiffs under their established freight rates, but, on the other hand, are covered thereby, and that the continued imposition of the aforesaid charge of $2.50 per car, or any charge for terminal services, subjects the Staley Company to different treatment from that accorded to competitors of the Staley Company that are located on plaintiffs' lines, and that said charge of $2.50 per car is a charge for what are in fact services covered by and included within the established freight rates of the plaintiffs applying to and from Decatur.

XII

The railroads do not enjoy a monopoly of transportation, and plaintiffs encounter keen competition from common carriers and

so-called contract carriers by motor vehicle, subject to Part II of the Interstate Commerce Act. Under that Act and under and in accordance with tariff schedules of rates on file with the Commission, motor carriers transport property in truck load and smaller lots, from and to stores, warehouses and places of business anywhere in the City of Decatur, and anywhere in all cities and numerous villages served by plaintiffs, including service to and from departments, buildings and platforms accessible to such vehicles within industrial plants, embracing all industrial plants in the City of Decatur, including the Staley Plant. To require the plaintiffs to assess a charge for placing cars at loading and unloading points accessible to their engines in industrial plants is, therefore, seriously prejudicial to the business of plaintiffs, and each of them, and greatly affects their ability to do business. The result of the order here assailed is greatly detrimental to the business of plaintiffs.

17 XIII

The aforesaid order of the Interstate Commerce Commission entered on May 6, 1941, in I. & S. Docket No. 4736, Switching Charges at Decatur, Ill., 245 I. C. C. 383 (Appendix A), is unlawful and void, and beyond the power of the Commission to make, for the following reasons:

(1) The Commission, as shown by its own statements and findings, failed and refused to carry out the duty and responsibility imposed upon it by the Interstate Commerce Act. The following findings appear in the Commission's report of May 6, 1941, in I. & S. Docket No. 4736, Switching Charges at Decatur, Ill., 245 I. C. C. 383 [p. 407] (Appendix A):

"Considerable evidence was introduced showing spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

It was the Commission's duty and responsibility to make certain that any order it entered in the premises did not result in unjust discrimination in violation of Section 2 of the Interstate Commerce Act, or in undue prejudice and preference in violation of Section 3 of that Act. The Commission entered an order, the effect of which was to require the Staley Company to continue to

pay a charge for the services connected with the spotting of
18 cars at the Staley Plant at Decatur, whereas no competitor of the Staley Company served by these plaintiffs has been required to pay a similar charge. At the same time it found that, if the evidence satisfactorily showed a similarity of circumstances and conditions as between the plant of the Staley Company and the plants of its competitors, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith.

Notwithstanding these findings, the Commission made no effort to determine whether unlawful practices exist at the plants that compete with the Staley Plant, although the Commission, under Section 15 of the Interstate Commerce Act, has ample power to make whatever investigations are necessary to determine whether unlawful practices exist, and has ample power to enter such orders as the facts may justify.

The Commission required the continuation of a charge against the Staley Company for services connected with the spotting of cars at the Staley Plant but did nothing whatever with respect to the elimination of unjust discrimination and undue prejudice against the Staley Company arising out of what the Commission itself said was the probability of the existence of unlawful practices at plants of the competitors of the Staley Company. The Commission has failed, neglected, and refused through the years to make any investigation of the existence of unlawful practices at the plants of the competitors of the Staley Company, although the Commission frankly and plainly recognizes the probability of the existence of such unlawful practices at such plants and the need for investigation in connection therewith.

The Commission, to use the language of the Supreme
19 Court in U. S. v. Chicago, M. St. P. & P. R. R. Co., 294 U. S 499, is subject to the reproach of dealing with the matter piecemeal. The Commission has failed to adjudge the fairness of the relation between the practices respecting the spotting services at the Staley Plant and the practices respecting the spotting services at the plants of its competitors. The Commission has not questioned its own capacity to eliminate any unjust discrimination or any undue preference or prejudice that may exist. But it has put off to an indefinite future the determination of questions of unjust discrimination and of undue preference and prejudice, and has left the Staley Company helpless in the interval. This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. The Commission shifted its responsibility from the shoulders of the present to the shoulders of the days to come. And this inaction and postpone-

ment followed a five-year period during which complaints were made to the Commission of the unjust discrimination and undue prejudice imposed upon the Staley Company as a result of the fact that it has been and is required to pay a charge for the spotting of cars on the industry tracks within its plant, whereas its competitors have not been required to pay any such charge.

(2) The evidence before the Commission showed without dispute and without contradiction that all the established interstate freight rates of these plaintiffs include the switching services incident to the placing of cars at points of loading and unloading at both points of origin and points of destination, including points of loading and unloading within industrial plants. But notwithstanding this undisputed evidence, the Commission cut off the terminal services of these plaintiffs, services that these plaintiffs hold themselves out to perform under their established
20 interstate freight rates applying to and from the plant of the Staley Company, at what were in substance and in fact the railroad yards, and denied to the Staley Company any terminal services whatever under the established interstate freight rates that plainly and indisputably cover terminal services. In the light of the undisputed evidence, it was arbitrary action for the Commission to hold that cars destined to the plant of the Staley Company were delivered under the established interstate freight rates when placed in a location in the railroad yards that was wholly inaccessible to the Staley Company, and to hold that in the case of cars originating at the plant of the Staley Company the established freight rates did not cover the spotting services connected with the movement of the cars from the points of loading within the Staley Plant to the railroad yards.

(3) The following finding in the Commission's report of May 6, 1941, in I. & S. Docket No. 47[illegible]3, A. E. Staley Mfg. Co. Terminal Allowance, 245 I. C. C. 383, 394 (Appendix A):

"Since the major uses of the tracks are special in character they properly may not be treated as general Wabash yards."

is contrary to the evidence and is without support in the evidence. The undisputed evidence shows that the major uses of the tracks making up the so-called Burwell yard were not special in character but that they were an integral part of the general Wabash yards and were properly treated as general Wabash yards.

(4) The report and order of the Commission of May 6, 1941, is unlawful and arbitrary in that it made the extent of the terminal services under the established interstate freight
21 rates applying to and from the plant of the Staley Company wholly dependent upon the size of the industry and

the volume of the traffic, in the face of the fact that the record clearly showed that the volume of the traffic had the effect of reducing the cost of performing the spotting service.

(5) The following finding (Finding No. 5, 245 I. C. C. 383, 408, Appendix A):

"All services between the tracks described in the immediately preceding finding and points of loading and unloading within the plant area of the Staley Company are services in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs."

is contrary to the evidence and without support in the evidence. The evidence showed, without dispute or contradiction—there was no evidence to the contrary—that the services between the aforesaid tracks and points of loading and unloading within the plant area of the Staley Company are not in excess of those rendered shippers at Decatur or shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings or spurs.

(6) The report and order of the Commission of May 6, 1941 (Appendix A), is arbitrary in that it disregards the undisputed evidence—here again, there was no evidence to the contrary—that the spotting or terminal services at the plant of the Staley Company are no greater and no more costly than those rendered at team tracks and other delivery points in the City of Decatur, Illinois.

(7) The action of the Commission on July 31, 1941, denying the plaintiffs' petitions of June 17, 1941, and June 20, 1941, for rehearing, and the failure and refusal of the Commission
22 to grant these plaintiffs a rehearing, constituted arbitrary action on the part of the Commission. The Commission in its report (245 I. C. C. 383, 393–394) referred to the contract entered into on June 1, 1938, between the Staley Company and the Receivers of the Wabash Railway Company, under which the latter were granted the right to use for a period of ten years certain ground and fixed tracks comprising what was commonly known as the Burwell yard. The Commission said (p. 393) that the Receivers of the Wabash were authorized to enter into the contract by the United States District Court, which had control of the Wabash pending the reorganization of its affairs. The Commission made these further findings respecting this lease (p. 394):

"The lease apparently was designed to lend substance to the Staley Company's contention, supported by the Wabash, that

the movement of Staley cars from the general yards of the Wabash to the points of unloading within the plant is direct or without interruption. This would be the fact as to many movements, if Burwell yard could be treated as though it were a part of the general Wabash yards. The lease did not affect the major uses of the tracks. Prior to December 10, 1937, they were used for Staley purposes, and they have been used for those purposes ever since that date. Assuming the contract to be a lawful one, the character of Burwell yard tracks was changed by operation of the lease from industrial tracks devoted to Staley uses to Wabash tracks devoted to similar uses. Since the major uses of the tracks are special in character they properly may not be treated as general Wabash yards."

Plaintiffs, in their petitions for rehearing and reconsideration, copies of which are attached hereto marked Appendix B and Appendix C, pointed out that the contract of June 1, 1938, between the Staley Company and the Receivers of the Wabash had
23 been canceled, that the tracks had been disconnected and were no longer used by the Wabash Railroad, and that the Wabash Railroad, in order to handle the traffic to and from the Staley Plant, had been required to build in its yards new tracks aggregating 7,085 feet in length. The Burwell yard having been abolished, and other tracks built by the Wabash Railroad as an integral part of the general Wabash yards, it follows, as the Commission itself recognized, that the movement of cars between the general yards of the Wabash Railroad and the points of loading or unloading with the Staley Plant, was direct and without interruption as to such movements, and that therefore the line-haul rates to and from the Staley Plant included the spotting services at the plant.

The means and the method surrounding the transportation and handling of cars between the general yards of the Wabash Railroad and points of loading and unloading within the Staley Plant are exclusively within the control of the Wabash Railroad and the Staley Company has no part in the determination of the means or the method surrounding such transportation and handling.

The Commission's report and order of May 6, 1941, are based upon the Commission's findings and conclusions respecting the status of the tracks making up the so-called Burwell yard. The Burwell yard having been abolished, and the use of these tracks discontinued, it was arbitrary action on the part of the Commission to deny the petitions for rehearing and reconsideration filed by these respondents.'

(8) The following conclusion of the Commission as set forth in its report of May 6, 1941, in I: & S. Docket No. 4736, A. E. Staley Mfg. Co. Terminal Allowance, 245 I. C. C. 383, 408:

"3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a) from Burwell yard tracks to points of unloading within the plant area of the Staley Company, (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of Section (6) 7 of the Act."

is contrary to the evidence and is without any support in the evidence. The evidence shows that all competitors of the Staley Company served by these plaintiffs wherever they are located, and that all shippers and receivers of freight generally at Decatur, pay no charge for the spotting of cars for loading or unloading at points within their plants over and above the established freight rates, and that the direct result of the Commission's report and order of May 6, 1941, in I. & S. Docket No. 4736, A. E. Staley Mfg. Co. Terminal Allowance, 245 I. C. C. 383, is to continue a prejudicial charge against the Staley Company not imposed on shippers generally.

(9) The Commission furthermore erred as a matter of law in concluding that the performance by these plaintiffs, without a charge in addition to the established freight rates and charges, of services embraced in the movement of cars between the interchange tracks at the Staley Company's plant or the Burwell yard tracks, as such interchange tracks have commonly been known, and points of loading or unloading within the Staley Plant, would result in a refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of Section 6 (7) of the Interstate Commerce Act. Plaintiffs' tariffs which were suspended by the Commission, referred to in paragraph VI of this complaint, specifically provided that the established freight rates were intended to cover the placement of cars for loading or unloading at the Staley Plant, and the performance by these plaintiffs of such service would, therefore, be a service expressly covered by the tariffs and not a service contrary to the tariffs.

(10) The Commission is without power to direct that plaintiffs' tariffs, referred to in paragraph VI, which were suspended by the Commission, should be canceled without a finding and evidence to support such a finding that plaintiffs established freight rates to and from Decatur were less than the minimum rates to cover the entire service, or without a specific finding that the established freight rates for the entire service would produce undue preference or prejudice, neither of which findings, if made, would have been justified by the evidence.

(11) The report and order of the Commission of May 6, 1941, are without foundation in the evidence and are not supported by essential findings of fact. The findings made by the Commission on pages 388–391 of its report of May 6, 1941, in 245 I. C. C. (Appendix A) under the heading "Effect of Switching Arrangements on Carrier Revenue" do not support the conclusions contained in the said report and do not support the said order of May 6, 1941. The conclusions and the order are wholly
26 inconsistent and at variance with, and without support in the said findings.

(12) The Commission acted beyond the scope of its authority and erred in making said report and entering said order of May 6, 1941, requiring these plaintiffs to cancel the tariffs referred to in paragraph VI hereof, as the evidence in the record was wholly insufficient to justify a finding that the rules and practices set forth in said tariffs were unlawful, or in violation of any provision of the Interstate Commerce Act.

Wherefore, plaintiffs respectfully pray:

First: That upon the filing of this bill, the Judge of this Court shall call to his assistance, in the hearing and determination of this cause, two other Judges, of whom at least one shall be a Circuit Judge;

Second: That process may issue against the defendants, United States of America and the Interstate Commerce Commission;

Third: That a preliminary injunction be entered annulling and setting aside the operation and effect of the said order of May 6, 1941, until the final determination of this cause;

Fourth: That upon the final hearing of this cause a permanent injunction shall be entered decreeing that the said order of May 6, 1941, is null and void and is set aside, suspended and annulled, and that its enforcement, execution and operation shall forever be enjoined, and that the United States of America and the Interstate Commerce Commission shall forever be restrained from taking any steps from instituting or further prosecuting any proceeding to enforce the said order;

27 Fifth: That these plaintiffs have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted,

N. S. BROWN,
R. F. BUTLER,
WILLIAM B. BROWDER,
ELMER A. SMITH,
Attorneys for Plaintiffs.

MAY 29, 1942.

135 East 11th Place, Chicago, Illinois.

28 [*Duly sworn to by R. E. Barr; jurat omitted in printing.*]

29 *Appendix A to complaint*

INTERSTATE COMMERCE COMMISSION

A. E. STALEY MANUFACTURING COMPANY TERMINAL ALLOWANCE

Ex Parte No. 104[1]

PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES, PART II, TERMINAL SERVICES

Submitted December 13, 1940. Decided May 6, 1941

1. Certain tracks found to be convenient points for receipt and delivery of traffic of the A. E. Staley Manufacturing Company, and service beyond those tracks found to be plant service for which the carriers are not compensated in their line-haul rates. Performance of such service by the carriers free of charge found to be unlawful.
2. Services rendered under line-haul rates on traffic to and from the plant of the Mississippi Valley Structural Steel Company found not unlawful.
3. Suspended schedules found not justified. Cancelation required. Prior report, 215 I. C. C. 656.

John S. Burchmore, Nuel D. Belnap, Luther M. Walter, and C. C. LaForgee for the industry.

N. S. Brown, L. H. Strasser, Frank J. Goebel, George F. Dyche, Edward A. Kaier, Robert Mitten, Guernsey Orcutt, Elmer A. Smith, R. F. Butler, and H. G. Powell for respondents.

J. A. Farquharson for labor organization.

[1] This report also embraces Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill.

E. F. Ledwidge, James J. Hoben, Kenneth A. Moore, and W. N. Webb for various interests.

G. V. Lovering for Interstate Commerce Commission.

REPORT OF THE COMMISSION ON FURTHER HEARING OF ISSUES INCLUDED IN THE FIFTY-FIFTH SUPPLEMENTAL REPORT

PATTERSON, *Commissioner:*

Exceptions to the report proposed by the examiner were filed by the parties, and the proceedings have been argued orally.

In the original report in this proceeding, 209 I. C. C. 11, we announced certain principles to govern switching or spotting services performed by respondents at industrial plants or the payment of allowances by respondents to industries for performing such services; and in the fifty-fifth supplemental report, 215 I. C. C. 656, division 3 applied those principles to the switching and spotting situation at the plants of the A. E. Staley Manufacturing Company and the Mississippi Valley Structural Steel Company at Decatur, Ill., hereinafter referred to as the Staley Company and the Steel Company.

At the time of the latter decision, May 22, 1936, the plant area of the Staley Company extended in a westerly direction from a point near Thirty-second Street to Jasper Street, approximately 2¼ miles. The western portion of the area, or the part reaching from Twenty-fourth Street to Jasper Street, about 1¼ miles, was enclosed by a wire fence with gates at the eastern and western ends. Within this enclosure there were some 40 buildings used in the manufacture of various products, principally from corn and soybeans. A large elevator, identified as elevator C, was located at a point approximately one-half mile east of the enclosure and about the same distance west of Thirty-second Street. A group of 6 tracks, known as Burwell yard, were located immediately north of the 8 tracks serving elevator C. A single track connected with the eastern end of Burwell yard near Thirty-second Street and extended approximately one-half mile easterly to Brush College Road, where it connected with a joint track of the Illinois Central Railroad Company, The Pennsylvania Railroad Company, and the Illinois Terminal Railroad Company.[2] The Staley trackage, including the Burwell yard tracks and the extension to the joint track, aggregated approximately 20 miles. All of the Decatur respondents,[3] except The Baltimore and Ohio Railroad Company, received and delivered Staley traffic on Burwell yard tracks, while the Baltimore & Ohio received and de-

[2] Frequently called the Illinois Central, the Pennsylvania, and the Terminal.
[3] The Illinois Central performed the service for the Pennsylvania and the Terminal.

livered such traffic on tracks located near the western end of the plant area. The Staley Company with its own locomotives and employees performed the service between these tracks and the points of loading and unloading within the plant area, including elevator C. For performance of those services respondents granted the Staley Company allowances based upon the actual cost of the service, the maximum allowed by the Terminal being $1.89 per loaded car, while the allowances of the others were limited to $1.65 per loaded car. In the area north of the Staley property, the Wabash Railway Company [4] maintained, and still maintains, locomotive and car repair shops and general yards for break-up, classification, and storage purposes, the Wabash main line extending through the yards from Brush College Road to Jasper Street.

31 The division found that the previously described Burwell yard tracks and the tracks near the western end of the plant area used by the Baltimore & Ohio constituted proper points for delivery and receipt of Staley traffic; that transportation service for which respondents were compensated in their line-haul rates began and ended at those tracks; that the service performed by the Staley Company beyond those tracks was plant or industrial service; and that, by granting the Staley Company allowances for services performed beyond the described tracks, the respondents provided the means by which the Staley Company enjoyed a service not accorded shippers generally and refunded or remitted a portion of the charges collected or received as compensation for the transportation of Staley traffic in violation of section 6 (7) of the Interstate Commerce Act.

Pending disposition of suits brought in the courts to enjoin or nullify the orders entered in this and several similar supplemental proceedings, the effective date of the division's order was postponed from time to time until June 15, 1937. The suit involving this order was dismissed without prejudice on May 19, 1938, or after our orders in similar proceedings had been sustained in United States v. American Sheet & Tin Plate Co., 301 U. S. 402, Goodman Lbr. Co. v. United States, 301 U. S. 669, A. O Smith Corp. v. United States, 301 U. S. 669, and United States v. Pan American Petroleum Corp., 304 U. S. 156.

All allowances to the Staley Company were discontinued on June 23, 1936,[5] and since that date all switching within the Staley plant has been performed by the Wabash. On November 15, 1937,[6] 5 months after the division's order became effective, the

[4] Norman B. Pitcairn and Frank C. Nicodemus, receivers.

[5] There is conflict in the evidence as to the date when the allowances were discontinued. One witness gave the date as July 8, 1936, while several said it was June 23 or June 25, 1936.

[6] An intraplant switching charge of $1.80 per car was collected for spotting during the period June 15 to November 14, 1937.

five Decatur respondents established a charge of $2.27 [1] per car to cover spotting services within the plant, i. e., the switching of loaded cars between the points of loading or unloading within the plant area and Burwell yard and the Baltimore & Ohio track connecting with the Staley plant. Under the general increases of 1937–38 the charge became $2.50 per car. All payments of the charges by the Staley Company have been made under protest. A similar charge published to apply on intrastate shipments was suspended and finally annulled by the Illinois Commerce Commission.

On June 16, 1936, or a little more than 3 weeks after the division made its decision, the Staley Company petitioned us to reopen the proceeding for further hearing on the ground that
32 it contemplated discontinuing the practice of performing switching services at its own plant and that of the Steel Company with the view of creating a new arrangement under which it would expect respondents with their own equipment and employees to spot cars for loading and unloading without charge to the industry. We denied this petition on November 9, 1936.

The arrangement above referred to became effective on June 23, 1936. Under it, the five respondents delivered and received Staley cars on the same tracks where they delivered and received such cars under the old arrangement. That is, cars of the Illinois Central, the Pennsylvania, the Terminal, and the Wabash were placed on Burwell yard tracks while those of the Baltimore & Ohio were placed on the track connecting with the plant near its western end. The service beyond those tracks, or the actual spotting, was accomplished by means of a pool arrangement under which the Wabash performed the service for itself and the other respondents, and it was compensated by the others on a pro rata cost basis. Stated another way, all spotting was performed by by locomotives and employees under control of one carrier, the Wabash, whereas under the old arrangement all spotting was performed by locomotives and employees of the Staley Company.

In a petition dated May 29, 1937, the Staley Company again asked that the proceeding be reopened for reconsideration or rehearing, pointing to the previously described pool arrangement as ground therefor. We denied this petition on June 8, 1937. By petition dated March 16, 1938, the Staley Company repeated its request for reopening, rehearing, and reconsideration, alleging that a new arrangement had been substituted for the pool arrangement. By order dated April 8, 1938, modified by

[1] Upon protest filed by the Staley Company against this charge, division 2 declined to suspend.

order of May 4, 1938, we reopened the proceeding for further hearing to—

"permit the presentation of evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery or receipt of cars handled to or from the Decatur, Illinois, plant of the A. E. Staley Manufacturing Company, and to or from the plant of the Mississippi Valley Structural Steel Company."

An incomplete record resulted from this limited reopening, and on July 29, 1939, we, on our own motion, again reopened the proceeding for further hearing—

"concerning the operating or other conditions at the A. E. Staley Manufacturing Company plant with respect to delivery or receipt of cars handled to or from its plant at Decatur, Ill., including the interchange arrangements with the connecting lines on such traffic, and to intraplant movements within said plant."

By schedules filed to become effective on December 15, 1939, the Illinois Central, the Terminal, and the Wabash pro-
33 posed to cancel the $2.50 spotting carge, or the charge for switching between Burwell yard and the points of loading and unloading within the plant area. The proposed cancelation was suspended in Investigation and Suspension Docket No. 4736, and that proceeding was heard with the further hearings in the title proceeding.

The evidence on further hearing shows that the previously described pool arrangement remained in operation until December 10, 1937. It was then discontinued because the Staley Company notified the Baltimore & Ohio, the Illinois Central, the Pennsylvania, and the Terminal that on and after that date convenience of the industry would not require them to deliver Staley traffic at the plant. Since the date mentioned all Staley traffic, moved in line-haul service by the Decatur respondents, other than the Wabash, has been interchanged with the Wabash at the several interchange points, located between the yards of the respective carriers, within the Decatur switching limits, and the service between the interchanges and the plant has been performed by the Wabash.

Generally, in-bound Staley traffic handled by the Wabash in line-haul service is now placed by that carrier upon Burwell yard tracks, and in-bound Staley traffic transported in line-haul service by all other Decatur respondents is now taken by the Wabash from the several points of interchange and placed in Burwell yard. This yard is now used as a point for the initial placement of in-bound Staley traffic just as it was under the two arrangements formerly in effect, the only difference being that under the

old arrangements traffic from the Baltimore & Ohio was initially placed on the connection near the western end of the plant. The Wabash performs the service from Burwell yard to the points of unloading in substantially the same manner that it performed the same service under the pool arrangement, the only difference being that, under the pool arrangement, Baltimore & Ohio cars were handled from the west-end connection and not from Burwell yard. Under the existing arrangement, out-bound loaded cars are generally moved from the plant via the western end to the Wabash storage yard, located north of the western end of the plant, or to the general yards, whereas under the pool arrangement such cars, with the possible exception of those routed over the Wabash, were switched from the plant to Burwell yard or to the west end Baltimore & Ohio connecting track.

The transformation of the Staley plant from an industry directly served by five different railroads to an industry directly served by but one did not increase the transportation cost of the Staley Company, but this was and still is because of the fact that the switching charges [8] of the Wabash for the movement
34 between the several interchanges and Burwell yard are absorbed by the Baltimore & Ohio, the Illinois Central, the Pennsylvania, and the Terminal, as the case may be.

Effect of switching arrangements on carrier revenue.—In 1914, or 2 years after the Staley Company began operations at Decatur, the Cincinnati, Indianapolis & Western, since acquired by the Baltimore & Ohio, constructed its tracks connecting with the western end of the plant, and thereafter important improvements, necessitating the acquisition of additional real property, were made. The record does not disclose the amount of capital required by the original construction or the subsequent improvements, but a witness testified that the sums involved were "great."

The Baltimore & Ohio-Wabash interchange is located at a point one-half mile south and west of the western end of the Staley plant. The service of the Baltimore & Ohio in the handling of Staley cars to and from this interchange is just as great as the service incident to the movement of cars to and from the Baltimore & Ohio connection with the Staley plant. It follows that its switching absorptions on Staley traffic represents losses in its revenue directly attributable to the abandonment of the plant connection.

From December 10, 1937, the effective date of the present arrangement, to April 1, 1940, the Baltimore & Ohio transported 17,064 loaded cars for the Staley Company, and the switching charges which it absorbed thereon aggregated $69,023.06, or an

[8] They are 14 cents per ton, minimum $2.97 per car, maximum $5.45 per car.

average of about $4 per loaded car. During the last 5 months of the pool operation, its cost for spotting cars within the plant was $2.41 per car, and substantial increases in the volume of movement during the years subsequent to 1937 no doubt would have produced reductions in this cost, if the arrangement had been continued. Since the spotting charge was increased on March 28, 1938, from $2.27 to $2.50 per car, the spotting service would have netted the Baltimore & Ohio some profit[9] if the pool arrangement had continued. Bearing in mind the fact that under the existing arrangement the Wabash collects and retains the $2.50 spotting charge, it is apparent that substitution of the existing arrangement for the pool arrangement reduced Baltimore & Ohio revenues on Staley traffic handled during the period December 10, 1937, to April 1, 1940, by $69,023.06, plus the difference between the spotting charge and its cost for the spotting. The maximum allowed the Staley Company for spotting was $1.83 per car. A 10-percent increase in this figure would produce an allowance of about $2[10] per car. On this basis the Baltimore & Ohio would have been required to pay the Staley Company $34,128 for spotting during the period from December 10, 1937, to April 1, 1940. Stated differently, if the old allowance arrangement, instead of the existing arrangement, had been substituted for the pool arrangement, the resulting losses in revenue during the period from December 10, 1937, to April 1, 1940, would have been $34,128 instead of $69,023.06.

The Illinois Central absorbed the switching charges of the Wabash or the Baltimore & Ohio on Staley traffic routed over its line from the time the plant was established in 1912 to April 3, 1930, when facilities for projecting its service to the plant were completed. This extension of service involved (1) the construction of a new connecting track, 691 feet in length, from the Illinois Central main line to the main line of the Terminal, the connection being at a point about 2½ miles northwest of the Staley plant; (2) trackage rights over the Terminal from the new connecting track to a point near Brush College Road, a little over 2 miles; and (3) construction of another new track, 2,180 feet in length, extending southerly from the main line of the Terminal to Brush College Road where a connection was made with the Staley track extending from Burwell yard. The record does not reveal the amount of capital involved in the construction of the track connecting the main lines of the Illinois Central and the Terminal, but it does show that $200,896.53 was expended in the construc-

[9] Assuming that the spotting charge would have been collected on all the traffic.
[10] In 1938 we authorized a general increase of 10 percent in freight rates to offset general increases in transportation costs. In the circumstances, it is fair to assume that Staley costs, if it had continued performing the service, would have warranted an increase in the allowance.

tion of the one connecting the Terminal with the Staley track. Of this amount $69,637.35 was borne by the Illinois Central and the remainder by the Terminal and the Pennsylvania. The facilities were established for the purpose of projecting the service of these railroads to the Staley plant, although some of them are now being used for other purposes. For example, the main line of the Terminal is used for various purposes and a portion of the joint track is used to serve the plant of Spencer-Kellog & Sons, processors of grain.

The Illinois Central-Wabash interchange is about one-half mile west of the western end of the Staley plant and a little north of the Baltimore & Ohio-Wabash interchange. During the entire period that the Illinois Central reached the plant the cost of the service, including maintenance, to and from Burwell yard averaged $1.39 per loaded car. The cost now incurred by the Illinois Central in switching Staley cars to and from the Illinois
36 Central-Wabash interchange is not shown, but a witness testified that it slightly exceeds that incident to Illinois Central service to and from Burwell yard. This indicates that Illinois Central switching absorptions on Staley traffic represent depletions in Illinois Central revenue attributable to the discontinuance of its own facilities for serving the plant.

Staley cars transported by the Illinois Central totaled 8,965 in 1938, and 11,238 in 1939, the average absorption per car being $4.56 in 1938, and $4.63 in 1939, the absorptions for the 2 years aggregating $92,888.80. A witness testified that during the operation of the pool arrangement, June 23, 1936, to December 10, 1937, the Illinois Central, the Pennsylvania, and the Terminal paid the Wabash an average of $2.77 per car for spotting. This suggests that during the operation of the pool arrangement the spotting costs incurred by these lines exceeded the spotting charge collected from the Staley Company by 50 cents per car, but it would not be fair to assume from this that spotting costs during and after the year 1938 exceeded the charge made for the service for, as previously indicated, the cost of the Baltimore & Ohio for this service during the last 5 months of 1937 averaged $2.41 per car and subsequent progressive increases occurred in the total number of Staley cars handled by all respondents. If the pool arrangement had been in operation during 1938 and 1939, the spotting costs of these lines probably would have been less than $2.50 spotting charge. It follows that substitution of the existing arrangement for the pool arrangement [9] caused the Illinois Central to lose $92,888.80 on Staley traffic handled during the years 1938 and 1939, while, if the old allowance arrangement had

[9] [10] See these footnotes on p. 23.

been substituted for the pool arrangement, the resulting losses in Illinois Central revenue would have been but $40,406, based upon an allowance of $2 [10] per car.

From April 3, 1930, to December 10, 1937, services of the Pennsylvania and Terminal were to the Staley plant by an agreement under which Staley cars handled in line-haul service by those two carriers were moved to and from Burwell yard by the Illinois Central as their agent. In 1939 the Pennsylvania transported a total of 2,937 cars for the Staley Company, and during March of that year Pennsylvania switching absorptions averaged about $4 per car. On this basis Pennsylvania absorptions of switching charges on Staley traffic during 1939 aggregated $11,748.

The Pennsylvania-Wabash interchange is located at the same point as the Illinois Central-Wabash interchange. In 1936 the service to and from Burwell yard cost the Pennsylvania about $1.65 per loaded car. The record does not disclose the
37 cost of the present service of the Pennsylvania to and from the Pennsylvania-Wabash interchange, but it is undoubtedly less than $1.65 per car. As previously indicated, the Illinois Central performs similar services at a cost of about $1.40 per loaded car, and, assuming that the Pennsylvania's cost is no greater than that of the Illinois Central, substitution of the existing arrangement for the pool arrangement [9] depleted the revenues of the Pennsylvania on Staley traffic during 1939 by about $11,013.75, or the aggregate absorptions in 1939 less 25 cents per car. If the old allowance arrangement had been substituted for the pool arrangement, Pennsylvania revenue losses in 1939 would have been $5,874, allowing the Staley Company $2 [10] per car for spotting.

Prior to April 3, 1930, the Terminal absorbed switching charges of the Wabash on traffic to and from the Staley plant, and from that date to December 10, 1937, it directly served the plant through the previously described agency agreement. During the last 3 months of 1939 the Terminal conveyed 1,369 cars for the Staley Company, and on these the switching absorptions aggregated $6,373.29, the average absorption per car being $4.655. Assuming that the number of Staley cars conveyed by the Terminal and the switching charges absorbed thereon during the last quarter of 1939 are fairly representative of those during the first 3 quarters, the total number of Staley cars conveyed by the Terminal during 1939 approximated 5,476, and the total switching charges absorbed by the Terminal approximated $25,493.16.

During the period from July 1, 1936, to June 30, 1937, the Terminal's cost for the service to and from Burwell yard averaged

[9, 10] See these footnotes on p. 2

82.5 cents per car, or if the number of loaded cars handled equaled the empties, $1.65 per loaded car. The Terminal-Wabash interchange is located 3½ miles west of the western end of the plant. As there is no evidence to indicate that the Terminal incurs any switching cost in the movement of Staley cars to and from this interchange, it is apparent that the difference between Terminal absorptions on Staley traffic and Terminal cost in performing service to and from Burwell yard represents losses in Terminal revenue that would not have occurred if the Terminal could have continued to serve the Staley plant direct, or if the existing arrangement had not been substituted [9] for the pool arrangement. Based on the estimated total movement of 5,476 cars, the Terminal's losses in 1939 approximated $16,457.76, or the total absorptions, less $1.65 per car. If the old allowance arrangement had been substituted for the pool arrangement, the Terminal's losses in 1939 would have been $10,952, allowing the Staley Company $2 [10] per car for spotting.

38 In 1939 the Staley cars transported by all of the respondents aggregated about 42,887, of which 15,411 were handled in line-haul service by the Wabash. Thus it appears that the Wabash performed connecting-line switching services on almost two-thirds of all Staley cars, and, as previously indicated, it switched all of them to and from the loading and unloading spots within the plant.

That the spread between the spotting charge and the cost of the service is relatively small is shown by the fact that the somewhat lighter volume of movement during the operation of the pool arrangement resulted in spotting costs to the Illinois Central and Terminal of $2.77 and $2.90 per loaded car, respectively. Even so, the charge undoubtedly would yield some profit if it were applied on all cars spotted. It is not applied on all of the cars, however. A portion of the Staley traffic is intrastate in character, for which no charge is provided, and the charge is not collected on all interstate shipments. To illustrate, most of the grain, including soybeans, processed by the Staley Company originates at points in Illinois while many of the products which it manufactures from Illinois grain and soybeans are shipped under transit arrangements to interstate destinations without Illinois, the total charges for the in and out movements being computed on the basis of the through rate on the product from the original of the raw materials to the destination of the product. The application of transit [11] to such shipments changes the character of the in-bound

[9] [10] See these footnotes on p. 23.

[11] Under the legal principles upon which the validity of transit arrangements rests, the in-bound movement loses its identity as a completed or separate movement and becomes instead a portion of an incompleted interstate movement.

movements from intrastate to interstate, and this in turn makes the spotting charge applicable, but the record shows that the Wabash does not collect the charge on shipments of this kind. During the month of September 1939, the charge was collected on 1,745 cars. As the largest movement occurs during September, October, and November, the total number of cars subjected to the charge during 1939 was not in excess of 20,940, or less than half of the total number of cars spotted during that year. As the evidence strongly suggests that the cost of the spotting service is not less than $2 per car, a conservative estimate of the annual losses of the Wabash resulting from spotting services is $32,000.

All Staley cars handled by the Wabash from the several different interchanges are switched in an easterly direction through the Wabash yards from Jasper Street to Brush College Road, thence westerly to Burwell yard. Excluding movements necessary to classification, the approximate length of the hauls from interchanges of the Baltimore & Ohio, the Illinois Central, and the Pennsylvania are 2.5 miles, and from the Terminal interchange about 5.5 miles. The charges for these movements average about $4 per car, and there is no reason to doubt that they yield the Wabash some revenue in excess of the cost of the services—perhaps enough to offset Wabash losses from the spotting service but certainly not enough to overcome the losses of the other respondents from switching absorptions. The existing arrangement results in substantial losses in the revenues of the carriers as a whole and losses in capital investments to all of them except the Wabash.

39

Status of Burwell yard.—By contract entered into on June 1, 1938, between the Staley Company and the receivers of the Wabash,[12] the latter were granted the right to use for a period of 10 years the ground and the six tracks comprising Burwell yard. By confirming an oral agreement which the parties had previously entered into with respect to the same matter, the contract made the effective date of the use retroactive to December 10, 1937, or the effective date of the existing switching arrangement. It also provided that the use might be terminated by either of the parties giving to the other 10 days' notice of its intention so to do. For the use of the yard the Wabash receivers agreed (1) to pay the Staley Company the sum of $1; (2) to pay all general taxes which might be levied upon the premises; (3) to maintain the right-of-way, rails, ties, switches, and all equipment in reasonably good condition; and (4) upon termination of the contract to redeliver to the Staley Company the

[12] The Wabash receivers were authorized to enter into the contract by the United States district court having control of the Wabash pending reorganization of its affairs.

premises and equipment in approximately as good condition as they were when the contract was made.

The Wabash's reason for entering into this contract is not satisfactorily explained. The contract recites that it is the policy of the Wabash "to, from time to time, acquire additional rights-of-way and track privileges for the purpose of developing * * * better * * * accommodations for established and future manufacturing industries * * * in * * * Decatur" and that the right to use Burwell yard would provide the Wabash with "additional space for the better operation of and service of trains into, from and through the city of Decatur." The leasing of the yard did not result in the establishment of any new industry at Decatur, nor did it enable the Wabash to render better service to any industry already located there. An occasional train has been made up in Burwell yard, and a few empty cars have been stored there. Excepting these casual uses, the Burwell yard tracks have been exclusively used since December 10, 1937, as they were prior thereto, in the handling of Staley cars. In the absence of some practical or operating necessity to warrant acquisition of additional tracks, the Wabash was not justified in assuming the burden of maintenance and taxes on the industrial tracks comprising Burwell yard.

The lease apparently was designed to lend substance to the Staley Company's contention, supported by the Wabash, that the movement of Staley cars from the general yards of the Wabash to the points of unloading within the plant is direct or without interruption. This would be the fact as to many movements, if Burwell yard could be treated as though it were a part of the general Wabash yards. The lease did not affect the major uses of the tracks. Prior to December 10, 1937, they were used for Staley purposes, and they have been used for those purposes ever since that date. Assuming the contract to be a lawful one, the character of Burwell yard tracks was changed by operation of the lease from industrial tracks devoted to Staley uses to Wabash tracks devoted to similar uses. Since the major uses of the tracks are special in character, they properly may not be treated as general Wabash tracks.

Physical changes made at Staley plant subsequent to the division's decision.—A refinery for processing corn and soybean oil was placed in operation in the early part of 1937. The loading racks, storage tanks, and buildings comprising this refining plant are served by two parallel stub-end tracks, one on each side of the refinery. The two tracks aggregate about 1,000 feet in length.

Prior to December 10, 1937, the Wabash connected with only one of the six Burwell yard tracks. To meet requirements of the

new arrangement which became effective on that date, new connecting tracks, giving the Wabash access to all Burwell yard tracks, were constructed. The arrangement also necessitated construction of two other tracks, one near the western end of the plant and the other extending into the southern portion of the plant area. The latter, about 900 feet in length, is adjacent to a lead track reaching from the northern portion of the plant, and, in conjunction with tracks previously put in service, it provides a route for the movement of cars between Burwell yard and all parts of the plant. The cost of the new tracks and connections, jointly borne by the industry and the Wabash, aggregated about $10,000.

Several tracks were rendered useless by the arrangement of December 10, 1937. Two of these extend from the western end of the area while another is the previously described extension connecting with the joint track of the Illinois Central, the Pennsylvania, and the Terminal at Brush College Road. All the tracks are still in place, but they are not in serviceable condition.

A witness testified that the arrangement reduced the in-
41 dustrial mileage in use from 20 to 14.1 miles, but this is predicated upon the assumption that the contract changed the status of Burwell yard tracks from industrial to carrier tracks.

Spotting services and matters relating thereto.—The services of at least three different engines and crews are required in the delivery of practically all in-bound Staley traffic. As previously shown, cars transported to Decatur by respondents other than the Wabash are switched from the several different points of interchange to the general Wabash yards by Wabash engines and crews assigned to interchange service, and from these yards they are switched to Burwell yard by engines and crews assigned to the eastern end of the general yards, while the movement from Burwell yard to the points of unloading is performed by engines and crews [13] assigned to the Staley plant. Cars moving to Decatur over the Wabash are delivered in the same manner with two exceptions, (1) the line-haul engines and crews place the cars in the Wabash general yards, and (2) shipments of grain and soybeans are switched from the general yards to a track for inspection [14] before being taken to Burwell yard, the inspection track

[13] The Wabash designates the engines performing the service within the plant as "Bum" engines, or engines that may be assigned work at any point within the Decatur terminal. The evidence shows that engine service required in the movement of cars to and from the points of loading and unloading and in intraplant movements average at least 24 hours per day. Frequently more than one engine is employed during a single 8-hour work period. The crews in charge of the engines go on and off duty at designated points within the plant. In these circumstances, the engines performing plant services properly may be treated as engines assigned to the plant.

[14] Shipments handled by other respondents are inspected before being taken to the points of interchange.

being located between the general yards and Burwell yard. All Staley cars are classified to some extent in the Wabash general yards, the classification being completed by the switching processes incident to the movement of the cars from those yards to Burwell yard and the method of their placement upon the tracks of the latter. Under this method the most northerly track, or track No. 1, is used for the placement of miscellaneous commodities, including coal and empty tank cars, track No. 2 for corn, track No. 3 for soybeans, and track No. 4 for grain, including corn and soybeans, the two remaining tracks, Nos. 5 and 6, being used for overflow and run-around purposes, respectively. The movement from Burwell yard to the points of unloading generally is (a) direct; (b) first to scale track, located in the western end of the plant, and then to unloading point; (c) first to tracks near unloading point, and then to unloading point; or (d) first to scale tracks, then to overflow tracks, and finally to point of unloading. The time required for the movement from the general yards to the points of unloading varies from 1 to 24 hours.

42 Cars made empty in the plan—and not reloaded there—are returned to the general yard or storage yard [15] of the Wabash by way of Burwell yard or the western end of the plant. Empty tank cars for out-bound shipments of glucose, sirup, and so forth are switched from Burwell yard to cleaning tracks, and while there they are subjected to a gaging process to determine the amount of residue, drained, and cleaned. From these tracks the cars are switched to scale tracks, there weighed, and then switched to the loading points. Empty tank cars for out-bound shipments of oil frequently are weighed but not gaged or cleaned prior to loading. Empty boxcars for out-bound shipments are switched directly to the points of loading, or to the scale tracks and then to the points of loading, from (a) industrial tracks within the plant, (b) from the Wabash storage yard, or (c) from the Wabash general yard, the movement from the Wabash yards being by way of the western end of the plant. Most cars used for shipments in bulk are weighed before loading while those loaded with package merchandise are not.

Generally, loaded cars covered by bills of lading are switched from the loading points to the Wabash general yard, but those not covered by bills of lading [16] are switched from the loading tracks to the Wabash storage yard to await instructions from the industry, the movement in most instances being by way of the western end of the plant. Many loaded cars are first switched

[15] The so-called storage yard consists of a group of tracks within that portion of the Wabash general yard north and west of the plant area.

[16] A witness estimated the number of cars removed without bills of lading at about 40 percent of the total number loaded.

to the scales and then to the storage or general yard. Some are first switched from loading tracks to industrial tracks within the plant for temporary storage and thence to the scales or to the storage yard or general yard. The cars taken to the general yard are classified, and those routed over lines other than the Wabash are then switched to the points of interchange, while those routed over the Wabash are moved to the main line of that carrier. Cars requiring expedited service are sometimes taken from the plant to the points of interchange without placement in the yards. This type of movement occurs quite frequently. Bills of lading finally are issued for many cars placed in the storage yard, and when this occurs such cars are switched from the storage yard to the general yard and thereafter they are treated in the same way as other cars taken from the plant to the general yard. However, a substantial number of loaded cars initially placed in the storage yard are returned to the plant for industrial purposes. During the month of September 1939, a total of 101 cars was switched from the storage yard to the plant to finish loading or for com-
43 plete unloading. Loaded cars are permitted to remain in the storage yard for periods in excess of 30 days. A substantial portion of Staley traffic is loaded in industrially owned or controlled cars. Demurrage is not collected on such cars, and the Wabash is not compensated for keeping them in storage beyond the free time, although its tariff provides a charge for keeping cars in storage on its tracks beyond the 24 hours' free time provided in its demurrage tariff.

Under the arrangement in effect prior to December 10, 1937, all out-bound loaded cars, with the possible exception of those routed over the Wabash, were first switched from the scales or points of loading to Burwell yard tracks, or to the Baltimore & Ohio track near the western end of the plant, from which they were removed by the line-haul carriers. Similar handling of out-bound loaded cars would be necessary under any arrangement that would permit all respondents to serve the plant directly.

The foreman and engine crews in charge of locomotives performing spotting and other switching services within the plant are regularly, if not permanently, assigned to that particular work, and daily contact with the several different plant processes and operations resulting from such regular assignment enables them to perform the switching with a minimum of specific instruction from the industry. However, the foremen and crews are guided by instructions shown on cards supplied by a Wabash clerk stationed in the scale house near the western end of the plant. As to in-bound shipments, the cards, prepared by this Wabash clerk, are based upon data obtained (a) from the shipping de-

partment of the Staley Company or (b) by physical check of cars on Burwell yard tracks. The information shown on the cards for out-bound loaded cars is obtained in the following manner: The Staley shipping department notifies the local agents of the different carriers designated in the bills of lading to receive the line haul from Decatur that certain cars are loaded and ready for shipment, giving a complete description of each shipment. Upon receipt of such information, the local agents of carriers, other than the Wabash, transmit it to the local agent of the latter and he, in turn, passes it, with similar information relating to shipments routed over the Wabash, to the Wabash clerk stationed in the Staley scale house.

Within the plant area there are 18 points at which cars are loaded or unloaded. The principal in-bound commodities, grain, soybeans, and coal, are unloaded at 4 points. Corn for processing is unloaded at elevator A, about 3,200 feet west of the western end of the Burwell yard track No. 2 upon which cars of corn for this elevator are initially placed. This elevator is served with 1 unloading track, the maximum capacity of which is 13 cars.

44 The movement from Burwell yard track No. 2 to the unloading track is direct. The switching processes result in the placement of 2 or 3 cars at the unloading spots and when these are made empty the others are pulled into place by car pullers owned and operated by the industry. Cars made empty at this elevator and not required for reloading are switched to the Wabash storage yard or general yards through the western end of the plant. From April 15 to 20, 1940, the corn unloaded at this elevator aggregated 49 cars.

Soybeans for processing are unloaded at elevator B, about 3,800 feet west of the western end of the Burwell yard track No. 3, used for initial placement of beans for this elevator. The capacity of this elevator is about 210,000 bushels. It is served by 1 unloading track capable of accommodating not more than 15 cars. The cars usually are placed for unloading once every 24 hours, the first movement being from Burwell yard track No. 3 to the scales, about 800 feet west of the unloading track, for weighing. The cars are then switched to the unloading track, if space for placement on that track is available; if not, the cars are switched from the scale to industrial tracks available for such cars and subsequently switched from those tracks to the unloading track. The switching processes result in the placement of 3 cars at the unloading spots, and when these are unloaded the others are pulled in place by an industrial car puller. Empty cars are switched from the unloading track to scales and weighed; then, if not needed for reloading, they are switched out of the plant by the western end.

From April 15 to 20, 1940, the cars unloaded at this elevator aggregated 44, while a total of 3,475 cars was unloaded there during 1937.

Soybeans, corn, and other grain are unloaded at elevator C, located immediately south of Burwell yard, for storage. It has capacity for 3¼ million bushels. Four unloading tracks extend along the north side of the workhouse, each of which is served by an industrial car puller. The total capacity of the 4 tracks is 65 cars. Cars for unloading at this elevator are initially placed on Burwell yard track No. 4, and the movement from that track to the unloading tracks, a distance of about 1,600 feet, is without interruption for weighing or intermediate placement. The cars are put on the 4 unloading tracks from the western end, the switching processes resulting in the placement of several at the unloading spots, and when these are emptied those remaining are pulled in place by the car pullers. Empty cars which are not required for loading are switched from the eastern end of the 4 unloading tracks to Burwell yard, and thence to the Wabash storage or general yard. Only 1 car was unloaded at this elevator from April 15 to 20, 1940, but a total of 9,437 cars was unloaded during 1937.

45 The coal dock,[17] located about 300 feet southwest of elevator B, is served by 2 stub-end unloading tracks, the total capacity of both being 11 cars. One of the tracks has a pit underneath, into which coal is dumped from drop-side or drop-bottom cars, while at the other the cars are unloaded with a clamshell scoop. A car puller serves both tracks. The movement from Burwell yard track No. 1, or the track used for initial placement of coal, to the dock is uninterrupted when there is space for additional cars on the unloading tracks. When space is not available on the unloading tracks, the cars are switched from Burwell yard track No. 1 to other industrial tracks, and, when space becomes available, they are switched to the unloading tracks. Switching processes result in the placement of a few cars at unloading spots, and when these are unloaded the others are pulled in place by the car puller. The switching service required in the delivery of coal, even when uninterrupted by intermediate placement, is much greater than that incident to delivery of any other important commodity. To reach the stub-end delivery tracks from Burwell yard track No. 1 necessitates a westward movement of about 4,800 feet and an eastward movement of approximately 1,200 feet. The empty cars are moved to the Wabash general yard by way of the

[17] The record shows that coal is also unloaded at two tracks designated north and south coal-storage tracks located about 1,000 feet north and west of the coal dock. Aside from the fact that coal is removed from the cars with clamshell scoops operated by locomotive cranes, the record is devoid of details as to this unloading point.

western end of the plant. A total of 74 cars was unloaded at the coal dock from April 15 to 20, 1940. During 1937 the coal unloaded aggregated 4,562 carloads.

The important out-bound movement embraces a variety of commodities loaded at 5 different locations. Corn and soybean products are loaded at a feed warehouse, feed house, and elevator, located about 2,200 feet west of the western end of Burwell yard track No. 6. The feed warehouse and elevator are served by a through track connecting with the main lead track to Burwell yard. This track is equipped with an industrial car puller. A short spur connecting with the through track serves the feed house. This spur is not equipped with a car puller. Empty cars are switched from industrial tracks, or from the Wabash general yard or storage yard to the loading tracks, except that when cars are to be loaded with bulk commodities the movement is first to scales and then to loading tracks, the movement from the yards being in either case by way of the western end of the plant.

Switching processes result in the placement of a few cars at the spots of loading at the feed warehouse and elevator, and when these are loaded the others are pulled in place by the car
46 puller. These buildings are served twice during each 24-hour period. When loaded, the cars containing bulk commodities are switched to the scales,[18] for weighing and then moved out the western end of the plant to the Wabash storage or general yard, dependent upon whether they are covered by bills of lading. Cars loaded with package goods are handled in the same way except that they are not taken to scales for weighing. From April 15 to 20, 1940, a total of 87 cars was loaded at the elevator. During 1937 a total of 3,321 cars was loaded at the 3 buildings. Of these, 3,095 contained bulk commodities.

Corn sirup, table sirup, glucose, and corn sugar are loaded at building No. 17, located about 500 feet south of elevator B. This building is served by four tracks, two of which extend along the north side of the building while the other two, one of which is a spur, serve the south side. Both the north and south sides of the building are provided with loading platforms. The total capacity of the tracks is not disclosed. Tank and box cars are loaded on one of the north-side tracks, and tank cars are cleaned and loaded on the other. Tank cars are also loaded and sometimes stored on the two south-side tracks, and at least one of the four tracks[19] is used in the loading of package goods. Exact placement of cars for the loading of such traffic is not required, as package freight is moved over the platforms and into the cars by

[18] In some instances loaded cars are temporarily stored on industrial tracks before being taken to the yards. This temporary placement may be made before or after weighing.

[19] The uses to which the tracks are put are not definitely described.

small motortrucks. Generally, tank cars for loading are first switched from Burwell yard track No. 1 to one or another of the above-described tracks where they are drained and cleaned, or, in the case of cars previously loaded with glucose, gaged, drained, and cleaned. Upon completion of these operations, the cars are switched to the scales, about 700 feet west of building No. 17, weighed, and returned for loading. When loaded, the cars are again switched [20] to the scales for weighing and thence to the Wabash storage or general yard.[21]

Empty boxcars for loading package goods are switched from industrial tracks, or from the Wabash storage or general yard to the loading tracks the movement from the yards being by the western end of the plant. Cars loaded with package goods are switched [18] out the western end of the plant to the Wabash storage or general yard.[21] From April 15 to 20, 1940, a total of 74 cars was loaded at this building. The cars loaded during 1937 aggregated 2,660.

47 Modified starch is loaded from building No. 16, located about 125 feet directly east of building No. 17, while bulk and package starches are loaded from building No. 20, located about 75 feet directly east of building No. 16. The latter building is served with 1 loading track, with a capacity of 6 cars. Building No. 20 is served by 2 loading tracks, the total capacity of which is 13 cars. Both buildings are provided with loading platforms. Exact placement of cars for loading with package goods is not necessary as such traffic is moved over the platforms and into the cars by small motortrucks. Empty cars are switched to the loading tracks from industrial tracks, or the Wabash storage yard or general yard, all cars from the yards being switched into the plant from the western end. If for loading with bulk starches, the cars are first switched to scales and then to loading points. Cars loaded with bulk starches are switched from the loading tracks to the scales, [18] and thence by the western end of the plant to the Wabash storage or general yard.[21] Cars loaded with package starch are switched out of the plant in the same manner except that they are not weighed. During the period April 15 to 20, 1940, a total of 86 cars was loaded from building No. 20. During 1937 the cars loaded at both buildings aggregated 3,505.

Oil is loaded into tank and box cars at the refinery building and storage tanks located about 2,500 feet west and a little south of Burwell yard track No. 1. They are served by 2 parallel stub-

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[18] See this footnote on p. 34.
[20] A few cars are sometimes cleaned on other tracks, and a few are first switched to temporary storage tracks and then to cleaning tracks.
[21] Dependent upon whether they are covered by bills of lading.

end tracks, 1 on each side of the refinery and tanks. Both tracks are equipped with racks for loading tank cars, the one on the north side having 6 loading pipes and the one on the south side 12. Empty tank cars for loading are switched (a) from Burwell yard track No. 1 to the loading tracks; (b) from Burwell yard track No. 1 to scales, about 1,500 feet west of the storage tanks, thence to loading tracks; or (c) from Burwell yard track No. 1 to scales, thence to tracks in the vicinity of buildings No. 16, No. 17, or No. 20 for temporary storage and thence to loading tracks. The cars are pushed on the stub-end loading tracks from the east. Loaded tank cars are switched from the loading tracks to the scales,[18] thence by the western end of the plant to the Wabash storage or geenral yard.[21] Empty and loaded box-cars are handled in the manner heretofore described for cars used in transporting package freight. From April 15 to 20, 1940, a total of 33 cars was loaded at this point. During 1937 the cars loaded aggregated 1,018.

48 Soybean products are loaded at building No. 48, located about 75 feet southwest of elevator B. It is served by 1 unloading track, a spur, which has a capacity of 10 cars and is equipped with a car puller. Cars are put on and off the spur track from the west end. Empty cars in groups of 10 are usually placed twice during each 24-hour period. The record does not indicate whether bulk or package products are loaded at this building. However, the evidence suggests that services incident to switching empty and loaded cars to and from this building are not unlike those required at other buildings, such as Nos. 16 and 20, where bulk or package products, as the case may be, are loaded. The distance from this building to the storage and general yards probably is less than that from any of the other loading points. A total of 168 cars was loaded from this building from April 15 to 20, 1940. The cars loaded in 1937 aggregated 4,245.

Elevator C is not a major loading point, but, nevertheless, considerable grain is loaded there. Four tracks extend along the south side of the workhouse and 3 of these, each accommodating 7 cars, are used in loading grain. The cars are put on the western ends of the loading tracks and pulled into position for loading by industrial car pullers. The movement of empty cars from the Wabash storage and general yards to the loading tracks is by way of Burwell yard, and out-bound loaded cars are handled in the same manner in reverse order. As pit scales are maintained in this elevator, there is no necessity for weighing empty or loaded

[18] [21] See these footnotes on pp. 34 and 35.

cars. One car of grain was loaded during the period from April 15 to 20, 1940. The cars loaded during 1937 aggregated 634.

Intraplant switching.—Industrial processes necessitate the movement of many cars between the several different buildings within the plant area. For example, corn and soybeans are frequently switched from the storage elevator to the processing elevators, and there is a steady movement of coal from the storage yard or dock to the drier building or germ-meal spur. The Wabash tariff authorizes 2 different charges on certain intraplant movements. When a car is loaded at one point, switched to another, and completely unloaded, the charge is $3.47. A similar charge is authorized when a car is returned to the loading point for the purpose of changing the lading. When a car, scheduled to move in line-haul service, is switched from one loading point to another to finish loading, the charge is $1.98, and a similar charge applies on in-bound cars switched from one unloading point to another to complete unloading. Similar charges are applied in the manner described on cars switched from the Wabash storage yard to the plant, although the yard is outside the plant area. Whether the $1.98 or $3.47 charge would be collected for the movement of a particular car is dependent
49 upon the Staley Company's representation of its purpose in directing the movement. During September 1939, the charges of $3.47 and $1.98 were collected on 325 and 111 cars, respectively.

No charge is assessed for many intraplant services. During the period from September 27 to October 1, 1939, a total of 44 cars of coal was switched from Burwell yard to tracks in the vicinity of the scales for temporary storage and subsequently they were moved from those tracks to unloading tracks at the coal yard or dock. All these cars were placed 2, and a few 3, times, but no charge was made for the switching necessarily incident to second and third placements, the Wabash claiming that the movements prior to final placement were made for the convenience of the carrier.

No charge is made for second placement of cars finally unloaded at elevator B nor for the additional switching caused (1) by the weighing of in-bound cars of soybeans before and after unloading at elevator B, and (2) by the weighing and cleaning of tank cars prior to loading. The carriers' rules governing the condition of freight cars for the interchange of traffic require stenciling of light weights upon all cars. Under this rule it is the duty of the industries to weigh and stencil all equipment owned by them. All carrier equipment used by the Staley Company is stenciled as required by the rule, but the light weight is not shown

on some of the industrial tank cars. There is no transportation condition to justify the weighing of empty cars upon which the light weights are stenciled in accordance with the carriers' rule, and, in those instances where cars are not so stenciled, it is the fault of the industry. In these circumstances the Wabash is under no legal duty to perform free of charge the switching incident to the light weighing of cars before loading or after unloading.

The crews in charge of engines assigned to the plant are said to perform intraplant switching according to directions shown on cards prepared by the Wabash clerk located in the plant, but the evidence shows that the work actually performed frequently exceeds that indicated on the cards. As previously pointed out, the information shown on the cards is supplied by the Staley Company.

Switch engines are not kept on duty within the plant for the purpose of performing intraplant switching, but the fact that one is almost always on duty there makes it possible for the Staley Company to enjoy intraplant switching services far superior to those accorded plants at which switch engines are not on duty at all times. During September 1939, the crews assigned to the plant were on duty a total of 950 hours 47 minutes. Of the total time worked, 800 hours 55 minutes were utilized in Staley switching and 149 hours 52 minutes in Wabash switching, all services performed in Burwell yard being computed as Wabash switching.

The Steel Company.—The plant of the Steel Company, located south of and adjacent to the central portion of the Staley plant, has 5 loading or unloading tracks, the total capacity of which is 22 cars. The plant is reached by the Baltimore & Ohio and the Wabash, the lines of both carriers extending along the southern boundary of the Staley plant from a point near the western end to connections with the 5 Steel Company tracks, the Wabash using a Staley-owned track under an easement. The 2 carriers spot the cars free of charge. The switching charges of those carriers are absorbed by other respondents when they receive the line haul.

At the time of the prior report by division 3, the Steel Company cars were spotted in practically the same manner as Staley cars. The respondents placed in-bound loaded cars on Burwell yard tracks, and from those tracks the Staley Company switched them over its own tracks to the points of unloading within the Steel Company's plant, the movement involving a back-up operation. Out-bound cars were handled in the same way in reverse order.

At the present time neither in-bound nor out-bound cars are initially placed in Burwell yard. The Steel Company cars are now switched between the general yards of the Wabash or the Baltimore & Ohio and the points of unloading or loading in progressive or uninterrupted movements. There is no intraplant switching at this plant. The spotting services are not performed by assigned engines and crews, are not coordinated to fit industrial operations, and do not appear to be greater than those incident to simple team-track deliveries.

General.—Respondents, other than the Wabash, are dissatisfied with the existing arrangement for switching Staley traffic because (1) it denies the Staley Company free spotting and (2) it accords the Staley Company the status of a local industry on the Wabash. They concede that the arrangement is uneconomical and illogical, but they deny all responsibility for its establishment, implying that its existence is due to the division's decision in the supplemental report. They assert that the selection of a proper method of switching Staley traffic is a problem for managerial solution, and they promise that an economical and efficient arrangement will be devised, if we authorize free spotting of Staley cars.

The division did not prescribe any arrangement for switching traffic at or to and from the Staley plant. If the Staley Company had elected to continue performing its own spotting, the resulting switching situation would have fully complied with the division's findings, if the allowances had been discontinued. The previously described pool arrangement was not discon-
51 tinued because it failed to meet any of the division's requirements, or because the services rendered under it were unsatisfactory in any respect. The present arrangement was substituted for the pool arrangement solely because the Staley Company finally became convinced that it could not obtain free spotting under the pool arrangement.

The Wabash is dissatisfied with the existing arrangement only to the extent that it fails to provide free spotting for the industry. The arrangement has enabled the Wabash to divert considerable traffic from the other respondents.

The Staley Company's contention that the principles prescribed in the original report, sensibly applied, entitle the industry to free spotting is not supported by the record. All the services incident to the placement of in-bound loaded cars and removal of out-bound loads are coordinated to meet the requirements of industrial processes. The Wabash crews assigned to the plant are familiar with the needs of the industry, and they perform the work with a minimum of instructions. In several respects the status of these crews is much the same as that of trusted employees

of the Staley Company. The degree of coordination involved is further emphasized by the manner in which the various switching operations are performed. The in-bound cars are first placed on Burwell yard tracks and subsequently moved to the points of unloading. The services involved in the initial spotting of cars on Burwell yard tracks are not materially different from those that would be necessary if the cars were unloaded on those tracks. All cars for unloading at elevator A are placed on one Burwell yard track, those for unloading at elevator B on another, and those for unloading at elevator C on still another.

If plant processes would permit the movement of cars from the general yards to the points of unloading, without intermediate placement on Burwell yard tracks, the Wabash obviously would not be justified in incurring the substantial expense incident to the second movement from Burwell yard to the points of unloading. The cars cannot be switched in this manner because the capacity of the unloading tracks is not great enough to accommodate the total number of cars frequently on hand for unloading. The total capacity of all tracks on which grain and soybeans are unloaded is only 93 cars whereas 1,000 cars of grain and soybeans are sometimes on hand at one time.

The capacity of the loading tracks is not sufficient to accommodate loaded cars awaiting disposition by the Staley Company. Because of this plant disability, prompt removal of loaded cars from loading tracks is necessary to make space for the spotting of additional empties for loading, and to avoid delays in loading operations loaded cars are frequently taken off the loading
52 tracks before the industry is ready for them to go forward to destination. Such cars are not switched directly from the loading tracks to the general yards. They are first taken to available storage tracks within the plant, or to Wabash storage tracks without the plant, and subsequently moved from those tracks to the general yards. Many loaded cars initially placed in the Wabash storage or general yards are returned to the plant for industrial reasons. As a rule the movement from the plant to the storage or general yards is performed by the engine and crews assigned to the plant, while the movement from the general yards to interchange connections or Wabash main-line connections is performed by engines and crews assigned to the Wabash general yards. There is one important exception to this general rule: When the Staley Company desires that a particular car move out in a particular train, the plant engine and crew take the car directly from the unloading tracks to interchange tracks or to the Wabash main line. Expensive operations of this kind would not be possible if the service were not controlled by indus-

trial influences. Loading preparations require the movement of many empty cars to and from cleaning and scale tracks. All these movements are performed according to industrial requirements. All the services incident to (a) the placement of loaded cars at unloading points for unloading, (b) the placement of empty cars at loading points for loading, and (c) the removal of loaded cars from the unloading tracks are performed in a manner to coincide with the needs and operations of the plant.

Several witnesses for respondents and the industry testified that all spotting services within the Staley plant are performed at the convenience of the Wabash. The degree of coordination reflected in the several services belies these assertions.

In-bound loaded cars are now handled in practically the same way that they were handled under the switching arrangements previously in effect at the Staley plant, i. e., the cars are first placed on Burwell yard tracks and subsequently switched from those tracks to unloading tracks within the plant area. Formerly out-bound loaded cars for road-haul movements over the Illinois Central, the Pennsylvania, and the Terminal were moved from the loading tracks to Burwell yard while those for road-haul movement over the Baltimore & Ohio were placed on the connecting track near the western end of the plant area, and out-bound cars for road-haul movement over the lines of those carriers would still be handled in this manner but for the actions of the Staley Company.

Under the existing arrangement it is the practice to move most loaded cars from the loading tracks to the Wabash general yard or the storage yard, the movement being by way of the western end of the plant. The storage yard is located in
53 that portion of the Wabash general yards north of the western end of the plant area. As to out-bound loaded cars, the general yard and storage yard are now used for Staley purposes in much the same manner as Burwell yard and the Baltimore & Ohio connecting track formerly were used for those purposes. As to many loaded cars taken from the loading tracks to the general yard or the storage yard, neither the Wabash nor the Staley Company knows at the time of movement whether they will be transported beyond or returned to the plant for partial or complete unloading. Plant necessities require return of many cars, and the charges assessed by the Wabash for the return movement are those published to apply on intraplant movements. The service involved in the movement of loaded cars between the unloading tracks and the storage or general yards is not dissimilar to that which would be performed on most cars if they were taken to Burwell yard.

Considerable evidence was introduced showing that spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith.

The service involved in the spotting of intrastate shipments at the Staley plant is similar to that required in the spotting of interstate shipments, and as previously indicated the State authority prohibits collection of charges for spotting intrastate shipments. This raises a question of discrimination between intrastate and interstate commerce which is not in issue.

Findings of fact.—We find that the principal basic facts are:

1. In-bound loaded cars for the Staley Company are placed by the Wabash on tracks in the Burwell yard, from which they are subsequently spotted to various points of unloading within the plant area.

2. Out-bound loaded cars from the Staley Company are taken by the Wabash from various points of loading within the plant area. Some are moved by it to tracks in the Burwell yard, but the bulk are moved to tracks in the storage yard or the general yard of the Wabash. From these various yards they are subsequently transported to destinations.

3. The movements between points of loading or unloading within the plant area of the Staley Company and the Burwell yard, the storage yard, or the general yard of the Wabash,
54 for which respondents now make a charge of $2.50 per car, in many cases are not direct but involve one or more additional movements, such as to scales, intermediate storage tracks, or cleaning tracks, and in all instances are, and must be, coordinated with the industrial operations of the Staley Company and conform to its convenience.

4. The tracks in the Burwell yard are reasonably convenient points for the delivery of traffic to the Staley Company; tracks in the Burwell yard are reasonably convenient points for the receipt of such out-bound traffic of the Staley Company as moves to that yard; and that tracks in the storage and general yards of the Wabash are reasonably convenient points for the receipt of such out-bound traffic of the Staley Company as does not move through the Burwell yard but through the west end of the plant.

5. All services between the tracks described in the immediately preceding finding and points of loading and unloading within the

plant area of the Staley Company are services in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs.

6. The services rendered to and from points of loading and unloading at the plant of the Steel Company, for which no additional charge is now made, are not in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs.

Conclusions.—Upon further hearing, we find:

1. That on cars to and from the Staley Company, the service of transportation of respondents under their line-haul rates and charges is completed by placement of in-bound loaded cars on tracks in the Burwell yard, and begins by removal of out-bound loaded cars from tracks in the Burwell yard when such cars pass through that yard, and by removal of out-bound loaded cars from tracks in the storage yard or general yard of the Wabash when the cars do not pass through the Burwell yard but move out-bound through the west end of the Staley Company's plant.

2. That all services between the Burwell yard or the storage or general yard of the Wabash and points of loading or unloading within the plant area of the Staley Company are plant services for the Staley Company and not common-carrier services covered by the line-haul rates and charges of respondent carriers.

3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a) from Burwell yard tracks to points of unloading within the plant area of the Staley Company (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to
55 that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the act.

4. That the existing charge of $2.50 per car for the services described in the immediately preceding finding has not been shown to be unlawful.

5. That the services rendered by respondents under the line-haul rates and charges on traffic to and from the Steel Company is not unlawful under section 6 (7) or other provisions of the act.

6. That the suspended schedules have not been justified.

An order will be entered requiring cancelation of the suspended schedules. No order is necessary in the title case.

EASTMAN, Chairman, concurring:

It should be made clear, I think, that in this case we are doing nothing strange or new but are only following a rule which was first laid down nearly 33 years ago in General Electric Co. v. New York Central & H. R. R. Co., 14 I. C. C. 237. Quoting from that decision, complainant's contentions were there as follows:

"It is contended for the complainant that it is entitled to compensation because, as is alleged, (a) the maintenance of its storage tracks relieves the defendants of the necessity of increasing their terminal facilities at Schenectady, which are admitted to be insufficient to accommodate all the traffic, including the complainant's; (b) by switching the cars from the storage tracks to its various shops and factories with its own engines and crews and switching them back again the complainant saves the defendants the expense of doing, car by car, what it does free of charge for other manufactories at Schenectady and elsewhere; (c) the defendants can and do deliver cars to complainant on its storage tracks in trains and take them away again in trains, instead of singly and at greater cost as they do free of charge for others in Schenectady and elsewhere; (d) the 'spotting' of cars for others, by which is meant the placing of cars at the doors of factories or on the spot where they are needed, is a service that is taken into consideration by the defendants in making up their rates, and therefore, when not done by them for the complainant, which does it for itself, there ought to be some abatement in the rate in the way of an allowance to the complainant. It is also urged that if the 180 acres of land within the complainant's inclosure were a manufacturing town, and its factories and shops belonged to different enterprises, the defendants, under their tariffs, would have to set all these cars free of cost at the different places where needed, and that the mere fact that the shops and factories belong to the complainant ought not to relieve the defendants of this duty or of the obligation to make some allowance when the complainant furnishes the tracks and engines and crews and does it for itself. And it is said also that the defendants long ago recognized their obligation to spot or place cards within the
56 complainant's plant by doing it, and later, during a number of years, by paying the complainant for doing it for itself."

The close parallel will be noted between the next to the last sentence in the above quotation and what is here said in the dissenting expression. In the case cited the Commission reached the following conclusion:

"But aside from that suggestion, we expressly hold that carriers are under no duty to extend their transportation obligations with

the extension of great industrial plants like that of the complainant. They can not be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry. Their obligation as common carriers involves only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange. In our judgment the complainant does nothing within its plant which it can lawfully call upon the defendants to do for it and therefore nothing for which it may lawfully demand compensation."

This finding was approved in New York Central & H. R. R. Co. v. General Electric Co., 219 N. Y. 227, and we followed the same rule in Solvay Process Co. v. Delaware, L. & W. R. Co., 14 I. C. C. 246, and in Crane Iron Works v. Central R. Co. of New Jersey, 17 I. C. C. 514. Our order in the latter case was affirmed by the commerce court in Crane Iron Works v. United States, 209 Fed. 238, and the two preceding cases were cited with approval by the Supreme Court of the United States in Tap Line Cases, 234 U. S. 1, 23, and Los Angeles Switching Case, 234 U. S. 294, 307.

The facts in the General Electric case differed in some respects from those presented here, for there the industry was performing the switching service and was not willing to permit the railroad to perform it. However, the situations are in principle the same, if, as I believe, our findings of fact are correct that the "movements between points of loading or unloading within the plant area of the Staley Company and the Burwell yard, the storage yard, or the general yard of the Wabash * * * in all instances are, and must be, coordinated with the industrial operations of the Staley Company and conform to its convenience." Our findings will also enable respondents to save the expense to which reference is made in the dissenting expression.

MAHAFFIE, Commissioner, dissenting:

The suspended schedules, in my opinion, have been justified. The result of our attempting to save these railroads from what we considered their profligacy is told in the report as to one of them as follows:

"It follows that substitution of the existing arrangement for the pool arrangement caused the Illinois Central to lose $92,888.80 on
Staley traffic handled during the years 1938 and 1939, while,
57 if the old allowance arrangement had been substituted for
the pool arrangement, the resulting losses in Illinois Central revenue would have been but $40,406, based upon an allowance of $2 per car."

The others, except perhaps the Wabash, fared much the same. The allowance was the carriers' plan intended to meet, at the least possible cost, their carrier obligations. We held it bad. The pool plan was devised to try to meet our objections. Our representatives are said to have discouraged its use. Consequently, the present more costly plan is now being used. In this way the procedure intended by us to cut railroad expenses and to increase net earnings has had exactly the opposite effect.

If the 40 elevators, mills, and other buildings constituting the plant of the Staley Company were each owned and operated by a separate concern, the railroads would be required to serve each of them at the line-haul rate. The real difficulty here is size. If the size of an industry is hereafter to determine whether it may or may not have terminal service without extra payment, we should immediately establish some uniform standard so that the permissible limits may be known.

I am authorized to state that Commissioner Alldredge joins in this expression.

58 *Order*

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE IN WASHINGTON, D. C., ON THE 6TH DAY OF MAY, A. D. 1941

INVESTIGATION AND SUSPENSION DOCKET NO. 4736 SWITCHING CHARGES AT DECATUR, ILL.

It appearing, That by order dated November 21, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the schedules enumerated and described in said order and suspended the operation of said schedules;

It further appearing, That a full investigation of the matters and things involved has been had and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before June 20, 1941, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner described in section 6 of the Interstate Commerce Act, and that this proceeding be discontinued.

By the Commission.

[SEAL] W. P. BARTEL,
Secretary.

59 *Appendix B to complaint*

Before the Interstate Commerce Commission

Ex Parte No. 104—Part II

A. E. STALEY MANUFACTURING COMPANY, TERMINAL ALLOWANCE—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES—TERMINAL SERVICES

I. & S. DOCKET No. 4736

SWITCHING CHARGES AT DECATUR, ILLINOIS

Petition on behalf of respondents Illinois Central Railroad Company, Illinois Terminal Railroad Company, and The Baltimore & Ohio Railroad Company, for vacation of the order herein of May 6, 1941, and for rehearing and reconsideration of the report herein of May 6, 1941

Now come the respondents, the Illinois Central Railroad Company, the Illinois Terminal Railroad Company, and the Baltimore & Ohio Railroad Company, and respectfully request the Commission to vacate the order herein of May 6, 1941, and
60 to grant a rehearing and reconsiderataion of the report herein of May 6, 1941 on further hearing of the issues included in the 55th Supplemental Report, and in support thereof respectfully state:

The report of May 6, 1941 shows that the Commission gave not only substantial weight but controlling weight to the contract of June 1, 1038 between the A. E. Staley Manufacturing Company and the Receivers of the Wabash Railway Company, covering the ground on which were located the tracks comprising what has been referred to as the Burwell Yard, and the use that the Wabash Railway Company has been making of this Yard. This contract, following notice from the Staley Company to the Wabash, was cancelled on March 1, 1941, and the tracks leading to the Burwell Yard have been disconnected. The yard is no longer used by the Wabash. The fact that the Wabash no longer uses the yard constitutes such a substantial change in conditions as justifies a further hearing in this proceeding and a reconsideration of the report of May 6, 1941.

There are two other considerations that in the judgment of these respondents justify a reconsideration by the Commission of its decision of May 6, 1941 herein. This decision perpetuates a very clear unjust discrimination and undue prejudice against the Staley Company. Respondents furthermore submit that when the Commission said, as it did on Sheet 36, that if the evi-

dence satisfactorily showed that the conditions and cir-
61 cumstances under which spotting is performed at various plants, some of which compete with the Staley Company, are substantially similar to those at the Staley plant,

"it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith,"

the Commission ran athwart the decision of the Supreme Court in United States v. C. M. St. P. & P. R. R. Co., 294 U. S. 499, and, to use the language of the Court, has failed in a full discharge of an immediate responsibility that fundamentally is a responsibility of the Commission.

And lastly we shall urge that the findings and conclusions of the Commission are inconsistent with the facts stated in its order. The purpose of the investigation instituted by the Commission in Ex Parte No. 104, Part II, Practices of Carriers Affecting Operating Revenues or Expenses, was to protect the carriers' revenues and reduce their expenses. Yet the report of the Commission brings out that most of the railroads serving Decatur would be far better off today from the standpoint of the protection of their revenues had the decision in the Staley Company Case, 215 I. C. C. 656, never been entered. This decision has proved abortive, a fact which is brought out by the findings in this report. The Commission nevertheless affirms the findings it reached in the Staley Company Case, 215 I. C. C. 656, the result of which will be to perpetuate a very substantial increase in the expenses of most of the railroads serving Decatur.

62 It will now be our purpose to consider each one of these points.

The contract of June 1, 1938 between the A. E. Staley Manufacturing Company and the Wabash Railway Company covering the use of the tracks comprising the so-called Burwell Yard has been cancelled, the tracks have been disconnected and are no longer used by the Wabash.

The Commission gave not only substantial but controlling weight in its decision of May 6, 1941 to the use being made by the Wabash of Burwell Yard, and the fact that the contract has been cancelled, and that the Wabash no longer uses the yard, constitutes such a change in conditions as justifies the Commission in rehearing and reconsidering this case.

The report of May 6, 1941 herein shows the very substantial, indeed the controlling, weight that the Commission in its determination of the issues in this proceedring gave to the use that has been made over the years of the tracks making up the yard commonly known as the Burwell Yard by the Staley Company

and by the Wabash, including particularly the circumstances surrounding the placement and classification of cars on the tracks in the Burwell Yard by the Wabash since June 1, 1938, the date of the contract between the Staley Company and the Wabash covering the lease to the Wabash of the Burwell Yard.

The Commission points out on Sheet 2 of its report that at the time of the decision in the Staley Company Case, May 22,
63 1936 (215 I. C. C. 656), a group of six tracks known as Burwell Yard were located within the plant area of the Staley Company immediately north of the eight tracks serving Elevator "C," and that at the time the Decatur respondents, except the Baltimore & Ohio, received and delivered the traffic of the Staley Company on the Burwell Yard tracks, the Staley Company with its own locomotives and employes performing the service between the Burwell Yard tracks and points of loading and unloading within the plant area.

Allowances to the Staley Company were discontinued on June 23, 1936, and on that day the cars of the Illinois Central, the Pennsylvania, the Terminal, and the Wabash were placed, as they had theretofore been placed, on the Burwell Yard tracks, while the services of actual spotting beyond those tracks were accomplished by a pool arrangement under which the Wabash performed the service for itself and the other respondents. This pool arrangement was discontinued on December 10, 1937.

The Commission in describing the manner in which the traffic of the Staley Company was being handled, said (Sheet 7):

"* * * This yard is now used as a point for the initial placement of inbound Staley traffic just as it was under the two arrangements formerly in effect, the only difference being that under the old arrangements traffic from the Baltimore & Ohio was initially placed on the connection near the western end of the plant. The
64 Wabash performs the service from Burwell Yard to the points of unloading in substantially the same manner that it performed the same service under the pool arrangement, the only difference being that under the pool arrangement Baltimore & Ohio cars were handled from the west end connection and not from Burwell Yard. * * *"

Under the heading of "Status of Burwell Yard" the Commission devotes two pages (Sheets 15–17) to the contract of June 1, 1938 between the Staley Company and the Wabash, under which the latter was granted the right to use for a period of ten years the ground and tracks comprising the Burwell Yard, and to the use the Wabash was making of the Burwell Yard tracks. The Commission says (Sheet 16) that the Wabash Railway's reason for entering into this lease or contract is not satisfactorily explained. Continuing, the Commission says (Sheet 16):

"* * * Excepting these casual uses, the Burwell Yard tracks have been exclusively used since December 10, 1937, as they were prior thereto, in the handling of Staley cars. In the absence of some practical or operating necessity to warrant acquisition of additional tracks, the Wabash was not justified in assuming the burden of maintenance and taxes on the industrial tracks comprising Burwell Yard."

The Commission concludes with the statement that since the major uses of the Burwell Yard tracks are special in character, they properly may not be treated as general Wabash tracks.

65 The Commission says on Sheet 19 that all Staley cars are classified to some extent in the Wabash general yards, the classification being completed by the switching processes incident to the movement of the cars from those yards to Burwell Yard and the method of their placement upon the tracks of the latter. Continuing the Commission says (Sheet 19):

"* * * Under this method the most northerly track or track No. 1, is used for the placement of miscellaneous commodities, including coal and empty tank cars, track No. 2 for corn, track No. 3 for soy beans, and track No. 4 for grain, including corn and soy beans, the two remaining tracks, Nos. 5 and 6, being used for overflow and run-around purposes, respectively. * * *"

The Commission in its finding of fact says that the principal basic facts, among others, are (Sheets 37–38):

"1. Inbound loaded cars for the Staley Company are placed by the Wabash on tracks in the Burwell Yard, from which they are subsequently spotted to various points of unloading within the plant area."

"4. That tracks in the Burwell Yard are reasonably convenient points for the delivery of traffic to the Staley Company; tracks in the Burwell Yard are reasonably convenient points for the receipt of such outbound traffic of the Staley Company as moves to that yard; and that tracks in the storage and general yards of the Wabash are reasonably convenient points for the receipt of such outbound traffic of the Staley Company as does not move through the Burwell Yard but through the west end of the plant."

66 And in Findings 2, 3, and 5 there are either references to the Burwell Yard or to the tracks making up the Burwell Yard.

Respondents submit that it is a fair statement that the use that has been made of the tracks making up the Burwell Yard, and the use that was being made of those tracks at the time this proceeding was last heard, constitute the cornerstone of the Commission's decision in this proceeding.

Now let us see what has happened to the Burwell Yard.

Following the giving of notice pursuant to the contract by the Staley Company to the Wabash, the contract of June 1, 1938 between the Staley Company and the Wabash, referred to on Sheet 15, was cancelled as of March 1, 1941, and the tracks disconected between the yard and the tracks of the Wabash. The Wabash is therefore handling the Staley traffic to and from its general yards. Respondents earnestly submit that with the Burwell Yard out of the picture, there should be a further hearing in this case.

The Commission says on Sheet 16 that the lease covering the Burwell Yard was apparently designed to lend substance to the Staley Company's contention that the movement of the Staley cars from the general yards of the Wabash to points of unloading within the plant is direct and without interruption. The Commission goes on to say that this would be the fact as to many movements if Burwell Yard were treated as a part of the
67 general yards of the Wabash. Surely then as to such movements, on the basis of this finding of the Commission and the fact that the use of Burwell Yard has been discontinued, the line-haul rates applying to the movements here referred to include the service of placing cars at points within the plant of the Staley Company.

We are not unmindful of the fact that the Commission in its conclusions finds, among other things (Sheet 39) that all services between the Burwell Yard or the storage or general yard of the Wabash and points of loading and unloading within the Staley plant are plant services for the Staley Company. But every rate of these respondents includes some terminal service at both the point of origin and the point of destination, and these respondents are unable to escape the conviction that for the Commissic to cut off a line-haul rate at a general or breakup yard of a railroad at destination, and to say that the services under that rate end at that yard, is to deny to shippers the terminal services that are reasonably and customarily performed under that rate.

Indeed, the Commission says on Sheet 33, under the title "General":

"* * * The inbound cars are first placed on Burwell Yard tracks and subsequently moved to the points of unloading. The services involved in the initial spotting of cars on Burwell Yard tracks are not materially different from those that would be necessary if the cars were unloaded on those tracks. All cars for unloading at Elevator A are placed on one Burwell Yard track, those for unloading at Elevator B on another, and those for unloading at Elevator C on still another."

68 The Commission in short finds that when the cars have been placed on the tracks in the Burwell Yard they have been finally placed insofar as the services are concerned that the railroads may render under their line-haul rates. But with the contract covering the use of the Burwell Yard cancelled, and the tracks disconnected and permanently out of use, is this Commission now to tell these respondent carriers that the placement of cars in general or break-up yards constitutes delivery under line-haul rates? If so, this would indeed be a novel, far-reaching and revolutionary principle.

The Commission says on Sheet 16:

"* * * Excepting these casual uses, the Burwell Yard tracks have been exclusively used since December 10, 1937, as they were prior thereto, in the handling of Staley cars. In the absence of some practical or operating necessity to warrant acquisition of additional tracks, the Wabash was not justified in assuming the burden of maintenance and taxes on the industrial tracks comprising Burwell Yard."

Now the lease or contract covering the Burwell Yard has been cancelled and the Wabash has given up the use of that yard. But what has the Wabash had to do? It has had to build three new tracks, one 2,150 feet long, the second 2,395 feet long, and the third track 2,540 feet long, a total of 7,085 feet, to enable the Wabash to handle efficiently and economically the traffic of the Staley Company. These tracks are being built on the property of the Wabash immediately north of the so-called Burwell Yard.

69 Respondents are unable to understand the theory that seems to characterize the decision of the Commission in this case that a railroad, while apparently it may be permitted to provide the necessary yards and facilities to enable it to handle the business of a small shipper, may not provide the necessary yards and facilities to enable it to handle the business of a large shipper. What has happened shows how the cold facts and the practical necessities of a situation always override in the end any theoretical approach to that situation. The Wabash was told by the Commission that it was not justified in assuming the burden of maintenance and taxation of the Burwell Yard tracks. It has given up the use of those tracks but in lieu thereof, in order to handle the traffic, has been compelled to build additional tracks on its own land.

The Commission says in substance (Sheet 17) that the Burwell Yard cannot be treated as though it were a part of the general yards of the Wabash. The use of Burwell Yard has been discontinued and as a result of that discontinuance the Wabash has found it necessary to enlarge its general yards.

The Commission says in its concluding paragraph in the discussion of the status of Burwell Yard (Sheet 17):

"* * * Since the major uses of the tracks are special in character they properly may not be treated as general Wabash tracks."

Here again the Commission carries out the theory that the provision of facilities to enable a railroad to handle the
70 traffic of a shipper, who receives and delivers traffic in volume, is in some way or other tinged with some sort of illegality.

Respondents respectfully but very earnestly challenge this finding of the Commission as we did the finding in the tentative report, and submit that the use of a track can not be special in character merely because that track is required to enable a railroad to handle traffic which it receives in volume from one shipper.

The Commission makes the following statement on Sheet 34:

"If plant processes would permit the movement of cars from the general yards to the points of unloading, without intermediate placement on Burwell Yard tracks, the Wabash obviously would not be justified in incurring the substantial expense incident to the second movement from Burwell Yard to the points of unloading. * * *"

But there will now be no second movement, if it could ever have been called a second movement, from Burwell Yard to the points of unloading. It seems to be the theory of this report, as it was the theory of the tentative report, that when a car comes to Decatur billed to the Staley Company it is the duty of the Wabash to couple an engine to that car and move that single car at once to the plant. This is not the way the work is done at the Staley plant or at any other plant of any size or importance in the United States. Switching operations are characterized by classification and to some extent by reclassification in intermediate
71 yards and by movements from and through these yards at the convenience of the railroad. When a car reaches a break-up yard of a railroad entering Chicago, an engine does not immediately couple itself to that car and move that car to an industry within the Chicago Switching District. That car may pass through two or more intermediate yards that are nearer the industry.

Words on a sheet of paper can not and will not change the methods that have been worked out for the handling of traffic at terminals, and these respondents very earnestly submit that the Commission should recognize the practical aspects connected with terminal operations and the delivery of cars to a plant that receives from and delivers to the railroads a vast volume of traffic.

We are unable to escape the conviction that the order herein continues the imposition of a switching charge at the Staley plant

merely because of the volume of the traffic and the size of the industry, notwithstanding the fact that the Commission itself said in the Car Spotting Case, 34 I. C. C. 609, page 616, that the mere size of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant.

It is clear from what the respondents have here said that Burwell Yard was one of the determining considerations in the Commission's decision of May 6, 1941, in this proceeding. The contract covering Burwell Yard has been cancelled and the
72 tracks disconnected. The Wabash is no longer using Burwell Yard. These respondents submit that under these circumstances there should be a further hearing in this proceeding and that the Commission should reconsider the case in the light of the facts developed at that further hearing.

The decision of May 6, 1941, in this proceeding perpetuates a very clear unjust discrimination and undue prejudice against the Staley Company.

Not one competitor of the Staley Company is paying a spotting charge at its plant.

The Commission finds (Sheet 39, par. 3) that the performance by the respondents, without charge, in addition to the line-haul rates and charges, of service (a) from Burwell Yard tracks to points of unloading within the plant area of the Staley Company, (b) from points of loading within said plant area to Burwell Yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell Yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally.

The latter portion of this finding follows generally the finding that the Commission through Division 3 made in its order of May 22, 1936 in the Staley Company Case, 215 I. C. C. 656. Now it might have been supposed that if the placement of cars at points within the Staley plant would result in the Staley Company receiving a preferential service not accorded to shippers
73 generally, there would have been in the record at the rehearing some hint of some fact that would support such a finding. Who are these shippers who would not be receiving the service that the Staley Company would be receiving if cars were placed at the Staley plant under the line-haul rates? Where are they located? Who are the shippers that would be unduly prejudiced if cars were spotted at the Staley plant under the line-haul rates?

There are no facts set forth in the Commission's report and no facts can be found in the record in this proceeding that will sup-

port any such finding as the Commission has made in Finding 3 on Sheet 39 that the placement of cars at points within the Staley plant would result in the Staley Company receiving a preferential service not accorded to shippers generally.

The fact of the matter is, as we pointed out in our brief of May 29, 1940 (pp. 35–54), that not one competitor of the Staley Company is paying a charge for the spotting of cars at its plant. Many competitors of the Staley Company appeared at the hearing, as pointed out in our brief (pp. 40–48), and made it clear that not one of them is paying such a charge, although it is equally clear that several plants of these competitors are as large as the plant of the Staley Company. To say that the Staley Company would receive a preferential service, if cars were placed at its plant under the line-haul rates, is to eliminate from consideration facts that stand unchallenged in the record and to make a finding not based upon the facts in the record.

74 The record makes it clear that the Staley Company would not receive a preferential service if the line-haul rates included the placement of cars at the Staley plant. On the contrary, the spotting of cars at the Staley plant under the line-haul rate will simply place the Staley Company on an equality with its competitors. The present arrangement clearly results in unjust discrimination and in undue prejudice against the Staley Company.

We earnestly invite the attention of the Commission to the paragraph at the bottom of Sheet 36 of its decision, believing, as we do, that the Commission on reconsideration will not in the end sanction a paragraph which discloses what seems to us to be an evasion of responsibility on the part of the Commission. This paragraph reads as follows:

"Considerable evidence was introduced showing that spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

We respectfully submit that the evidence does show, and satisfactorily so, that the circumstances and conditions under which spotting is performed at the plants of several of the com-

75 petitors of the Staley Company are substantially similar to those at the plant of the Staley Company. We refer to pages 276 to 303 and 551 to 589 of the record. This evidence we reviewed at pages 35 to 54 of our brief in this proceeding, filed on

May 29, 1940. We earnestly submit that it should not be thrown aside in any such manner as the Commission here throws it aside.

It just cannot be that the services at the Staley plant are so unusual and so different from the services performed generally at plants engaged in the same line of business and competing with the Staley Company as to justify the difference in treatment that the Commission here makes permanent by its decision.

We are particularly concerned at the last sentence in this paragraph on Sheet 36 in which the Commission says that if the evidence did satisfactorily show that the circumstances and conditions at these various plants are substantially similar to those at the Staley plant, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith. We think the Commission in making this statement has run athwart the decision of the Supreme Court in United States v. C. M. St. P. & P. R. R. Co., 294 U. S. 499, a decision considered in our exceptions of November 9, 1940 in this case (pp. 118–120).

The Commission has not, in our judgment, and we say this with the greatest respect to the Commission, assumed the immediate responsibility before it, if we may use the language of the Court in the Milwaukee Case. The Commission here puts
76 off to an indefinite future the curing and elimination of the unjust discrimination and undue prejudice against the Staley Company which we think is implicit in this paragraph. The Commission has shifted its responsibility from the shoulders of the present to the shoulders of an indefinite and uncertain day to come. The Commission, to use the language of the Supreme Court in the Milwaukee Case, leaves the Staley Company helpless in the meantime.

We repeat the statement in our exceptions that to deal with the Staley Company as the Commission proposes here to deal with that company, is to reject not only the spirit but the letter of the Court's decision in the Milwaukee Case. The continuance of the existing wrong can not be justified by the possibilities that may lurk in future investigations.

The findings and order of the Commission of May 6, 1941, cannot be reconciled with the findings made by the Commission respecting the effect of switching arrangements on carrier revenues.

The decision in the Staley Case, 215 I. C. C. 656, has proved abortive, and the decision of May 6, 1941, herein will likewise fail to bring about the results intended by the Commission in its decisions in these cases involving terminal allowances and services.

We are utterly unable to reconcile the findings on Sheets 8–15, inclusive of the report herein of May 6, 1941, under the title "Effect of Switching Arrangements on Carrier Revenue," with the Com-

mission's ultimate finding that the line-haul rates do no in-
77 clude the spotting services at the Staley plant, as a result of which findings the present arrangement will be continued in effect.

The Commission brings out by its discussion of the effect of switching arrangements on carrier revenue the extent to which the decision of Division 3 in the Staley Company Case, 215 I. C. C. 656 has proved abortive, and has increased the terminal costs of most of the Decatur railroads. And this decision of May 6, 1941, will become, as the earlier decision became, a decision to increase the rail costs and not to reduce them.

The Commission passes by the fact, as brought out by the record and in the dissenting opinion of Commissioner Mahaffie, that the changes in the methods of switching the Staley plant in recent years have followed discussions with members of the staff of the Commission, and that the Staley Company in good faith, and we emphasize in good faith, sought to bring about such changes in the methods of performing switching services at the Staley plant as would meet the points urged by representatives of the Commission.

Of course the Staley Company was making every effort to accomplish such a change in the methods of performing the switching at the plant of the Staley Company as would make it possible for it to receive the same treatment, insofar as concerned terminal services under the line-haul rates, as its competitors receive.

78 The Commission states on Sheet 11, after referring to the costs incurred by the Illinois Central in reaching the plant over its own rails, that these costs indicate that the Illinois Central's switching absorptions on Staley traffic represent depletions in Illinois Central's revenues attributable to the discontinuance of its own facilities for serving the Staley plant. But what was the reason for the discontinuance of those facilities? Who suggested that they be discontinued? We dealt with this matter in our exceptions (pp. 27 to 41), and again call the Commission's attention to the fact that at the conferences between the members of the Commission's staff and representatives of the Staley Company it was said that all the Staley Company had done was to substitute a Wabash pool engine for a Staley engine (Tr. 686–7). The discontinuance by the Illinois Central of its own facilities for serving the Staley plant followed this conference between the members of the Commission's staff and representatives of the Staley Company.

The fact of the matter is that these respondents and the Staley Company have tried out the Commission's finding in the Staley Company Case, 215 I. C. C. 656. The changes in the methods of performing spotting services at the Staley plant have followed the discussions between the representatives of the Commission and

of the Staley Company. What has been the result? Most of the Decatur railroads, as shown by the Commission in its discussion (Sheets 8–15, incl.) of the effect of switching arrangements on carrier revenue, are substantially worse off from a financial
79 standpoint than they would have been had the Commission's decision in the Staley Company Case never been written. Commissioner Mahaffie well points out (Sheet 43) that these respondents have not been saved from their profligacy. They have had imposed upon them on the other hand very substantial losses, and how are told in substance that those substantial losses must be continued.

Let us quote for example what the Commission says about the situation of the Illinois Central on Sheets 11–12:

"* * * It follows that substitution of the existing arrangement for the pool arrangement caused the Illinois Central to lose $92,888.80 on Staley traffic handled during the years 1938 and 1939, while if the old allowance arrangement had been substituted for the pool arrangement the resulting losses in Illinois Central revenue would have been but $40,406.00, based upon an allowance of $2.00 per car."

These respondents have followed the procedure intended by the Commission to cut railroad expenses and to increase net earnings. This procedure has had exactly the opposite effect of that which was intended. Yet notwithstanding this showing and notwithstanding the solemn findings of the Commission on Sheets 8 to 15, inclusive, the Commission refuses to modify the findings in the Staley Case.

We ask the Commission seriously to consider whether it should not let the managements of these railroads work this thing out in their own way to see what they can do. The Commission has tried
80 it and these losses have been the direct result. Why not let management try it out and see what management can accomplish?

The findings that the Commission makes on Sheets 8–15, inclusive, of its report, in which it deals with the effect of switching arrangements on carrier revenue, utterly condemn the conclusions and order of the Commission in this proceeding. These respondents are sure that the Commission upon reflection will not permit an order to stand when it knows that the the result of that order will be just the opposite of what the Commission intended. That this is so is shown by what happened following the entry of the Commission's first order of May 22, 1936, in this proceeding (215 I. C. C. 656). The Commission ought not to make the same mistake twice.

CONCLUSIONS

Wherefore, these respondents respectfully request that the order herein of May 6, 1941, be vacated, and that this case be set down for a further hearing and that following such further hearing the Commission reconsider its decision of May 6, 1941, herein.

Respectfully submitted.

R. F. BUTLER,
F. J. GOEBEL,
ELMER A. SMITH,
Attorneys for Above Respondents.

135 EAST ELEVENTH PLACE,
CHICAGO, ILLINOIS, *June 17, 1941.*

81 CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Petition upon all parties of record in these proceedings, by mailing a copy thereof, properly addressed, to each other party.

Dated at Chicago, Illinois, this 17th day of June 1941.

ELMER A. SMITH,
Of Counsel for Above Respondents.

82 *Appendix C to complaint*

Before the Interstate Commerce Commission

Ex Parte No. 104, Part II

A. E. STALEY MANUFACTURING COMPANY, TERMINAL ALLOWANCE—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES—TERMINAL SERVICES

I. & S. Docket No. 4736

SWITCHING CHARGES AT DECATUR, ILLINOIS

Petition of Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), Respondents Herein, for Rehearing and Reconsideration, and for Vacation of the Order of May 6, 1941, Requiring Cancellation of Schedules Suspended in the I. & S. Proceeding

Come now Wabash Railway Company and Norman B. Pitcairn and Frank C. Nicodemus, Jr., its Receivers, and respectfully pe-

tition the Commission to vacate the order entered in I. & S. Docket No. 4736, and to grant a rehearing and reconsideration herein; and as grounds therefor state:

I

CHANGED PHYSICAL CONDITIONS

Since the conclusion of the latest hearing in this proceeding there has been a substantial change in the physical conditions under which the terminal, or so-called "spotting services," at the plant of the A. E. Staley Manufacturing Company in Decatur, Illinois, is performed, said change growing out of the facts and circumstances which we shall hereinafter attempt to set forth as briefly as possible.

83

In the proposed report, issued by Examiner Frank Weaver on or about September 28, 1940, beginning at sheet 19, appears a discussion under the caption of "Status of Burwell Yard." After reciting the salient provisions of the contract entered into on June 1, 1938, by and between the A. E. Staley Manufacturing Company and the Receivers of the Wabash, being in the nature of a lease of the six tracks comprising said Burwell Yard effective December 10, 1937, and describing the uses made of said yard subsequent to that date, the Examiner, at sheets 20 and 21, says:

"Excepting these casual uses, the record shows that since December 10, 1937, Burwell yard tracks have been used for the same purposes and in the same manner that they were used prior to that date. In the absence of some practical or operating necessity to warrant acquisition of additional tracks, the Wabash was not justified in assuming the burden of maintenance and taxes on the industrial tracks comprising Burwell yard, unless the change in switching arrangements which occurred on December 10, 1937, placed the Wabash under a legal duty to provide convenient tracks for the initial placement of Staley cars. The Wabash was under no such duty prior to December 10, 1937.

"The lease apparently was designed to lend substance to the Staley Company's contention, supported by the Wabash, that the movement of Staley cars from the general yards of the Wabash to the points of unloading within the plant is direct or without interruption. This would be the fact as to many movements, if Burwell yard could be treated as though it were a part of the general Wabash yards. The lease did not affect the major uses of the tracks. Prior to December 10, 1937, they were used for Staley purposes and they have been used for those purposes ever since that date. Assuming the contract to be a lawful one, the character of Burwell yard tracks was

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changed by operation of the lease from industrial tracks devoted to Staley uses to Wabash tracks devoted to similar uses. Since the major uses of the tracks are special in character they properly may not be treated as general Wabash tracks."

Evidently construing the language above quoted from the proposed report as indicating that the Commission did not approve the leasing of the so-called Burwell Yard tracks to the Wabash, the Staley Company, exercising the option reserved in the lease, gave notice cancelling the same, the said cancellation being effective on March 1, 1941. Since that date the Burwell Yard tracks have been disconnected from the tracks of the Wabash, and no use of said tracks in any manner whatever has been made thereof by the carrier. The discontinuance of the use of Burwell Yard rendered the yard and storage tracks of the Wabash wholly inadequate to continue reasonable service to the Wabash's Decatur patrons, including the Staley Company. To supply this deficiency the Wabash found it necessary to begin the construction of three new tracks on its own property adjacent to its yard tracks north of the Staley plant. These tracks,
2,150 feet, 2,395 feet and 2,540 feet, respectively, in
85 length, provide 7,085 feet of additional track space which
will be completed and available for general use at an early date. In the meantime, since March 1, 1941, the placement of loaded cars within the plant has been made directly from the Wabash yard or storage tracks as they were available and from connections between the Wabash and other Decatur lines. Upon the completion of the three tracks aforesaid the Wabash expects to have ample track facilities to discharge its obligations not only to the Staley Company, but to all its patrons in the Decatur district.

The findings and conclusions of the Commission, as set out in the report of May 6, 1941, unless modified, will create uncertainty and embarrassment to the Wabash in its efforts to serve the Staley plant and at the same time maintain its operations within the limits of the law and the decisions of the Commission, as will appear from the following:

Findings 4 and 5 (sheet 38) read as follows:

"4. That tracks in the Burwell yard are reasonably convenient points for the delivery of traffic to the Staley Company; tracks in the Burwell yard are reasonably convenient points for the receipt of such out-bound traffic of the Staley Company as moves to that yard; and that tracks in the storage and general yards of the Wabash are reasonably convenient points for the receipt of such out-bound traffic of the Staley Company as does not move through the Burwell yard but through the west end of the plant.

"5. All services between the tracks described in the immediately preceding finding and points of loading and unloading within the plant area of the Staley Company are services
86 in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs."

Conclusions 1, 2, and 3 (Sheets 38 and 39) read as follows:

"1. That on cars to and from the Staley Company, the service of transportation of respondents under their line-haul rates and charges are completed by placement of in-bound loaded cars on tracks in the Burwell yard, and begins by removal of out-bound loaded cars from tracks in the Burwell yard when such cars pass through that yard, and by removal of out-bound loaded cars from tracks in the storage yard or general yard of the Wabash when the cars do not pass through the Burwell yard, but move out-bound through the west end of the Staley Company's plant.

"2. That all services between the Burwell yard or the storage or general yard of the Wabash and points of loading or unloading within the plant area of the Staley Company are plant services for the Staley Company and not common carrier services covered by the line-haul rates and charges of respondent carriers.

"3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a) from Burwell yard tracks to points of unloading within the plant area of the Staley Company, (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to
87 shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the act."

The Commission adheres to its former decision that the transportation service for which the carriers are compensated by their road-haul rates and charges are completed by placement of in-bound loaded cars on tracks in the Burwell yard. In its conclusion 1, however, it goes beyond its former holding and says that said service "begins by removal of out-bound loaded cars from tracks in the Burwell yard when such cars pass through that yard, and by removal of out-bound loaded cars from tracks in the storage yard or general yard of the Wabash when the cars do not pass through the Burwell yard, but move out-bound through the west end of the Staley Company's plant." This same broadening of

the former decision of the Commission is evident from the language of conclusions 2 and 3.

The Wabash tariffs provide for the application of the terminal charge of $2.50 for any service required in moving cars over the tracks of the Staley Company within the plant and, on out-bound loads, covers only the service within the plant up to the point at which the Staley tracks connect with the Wabash tracks. Since the transportation of the cars to such point does not bring them to the "storage yard or general yard of the Wabash," and since under the provisions of the law the carrier may make no charge except that prescribed in its schedules on file with the Commission, and since no schedule is on file covering the transportation of out-bound loaded cars from the boundary line of the plant over
88 the tracks of the Wabash to its "storage yard and general yard," and since the Commission's conclusion is that the road or line-haul rate or charge does not compensate the Wabash for any service in getting the car to said storage yard or general yard, it is obvious that under the conclusion that the Commission has reached in its latest report there is a service between the boundary line of the plant and the yard or storage tracks of the Wabash for which no tariff charge is provided.

Under the operation in effect since March 1, 1941, the date on which the use of Burwell yard was discontinued, all out-bound loads must move by way of the westerly exit of the plant and the service above described must be performed in transporting all such loads.

On in-bound loads the same problem presents itself. The Burwell yard tracks may no longer be used for what the Commission regards as the initial placement of Staley cars. The Burwell yard tracks are no longer connected with Wabash rails. Since the Commission has concluded that the service for which the Wabash is compensated by its line-haul rates and charges on in-bound shipments terminates when the cars are placed on the Burwell yard tracks the question presented by the new situation is, where may such cars now be placed so as to terminate the carrier's obligation under its line-haul rates and charges.

The obligation of the carrier under its line-haul rates and charges includes, of course, the placement of cars and making them conveniently available for unloading by the consignee. We are convinced the Commission has no thought of modifying
89 that obligation, yet under the situation above pointed out the conclusions of the Commission now reached in its latest report seem to support the idea that the carrier owes no such obligation to the Staley Company. Obviously cars cannot be unloaded on the Wabash storage tracks or general yard tracks

and so far as we know there is no other point at which they may be conveniently placed for unloading unless they be taken and placed at a point where the Staley Company desires to unload them and where it has provided facilities for such unloading. That place is designated in the bills of lading and shipping instructions furnished the carriers by the Staley Company or its shippers, yet the Commission holds that placement of cars in compliance with the said instructions of the shipper or the Staley Company subjects the shipment to the terminal charge of $2.50 per car.

We believe the existence of the incongruous situation confronting the Wabash as the result of discontinuance on March 1st of the use of the Burwell yard tracks followed by the conclusions reached by the Commission in its latest report must be recognized and corrected by the Commission and that a rehearing or reconsideration is unavoidable.

II

THE ISSUE OF DISCRIMINATION

The Commission makes no finding of fact and states no conclusion with respect to the alleged discrimination which has been stressed by all parties and which seems to be one of the
90 most important issues in the proceeding. The Commission dismisses this issue with the following comment appearing at sheet 36:

"Considerable evidence was introduced showing that spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

We have always felt and still feel that this question of discrimination must be definitely and affirmatively treated and disposed of before a satisfactory solution of the difficult problem presented in these proceedings can be attained. The comment of the Commission above quoted gives cold comfort to a shipper who is the victim of discrimination. It is well known that the instances as to which testimony was offered at the latest hearing were only a few specimens, gathered at random at manufacturing plants at which terminal spotting service within large plants is performed without the superimposition of additional charges.

One need not go beyond the limits of the Decatur district to find definite proof of this fact, and it is clearly established the spotting charge on cars to and from the Staley plant at Decatur is the only one of its kind in the United States.

We are not unmindful of the fact that the Commisson has
91 notified the carriers generally that they will be expected to take the initiative in correcting any situations that do not measure up to the findings and pronouncements contained in the Commission's findings and orders in the general Ex Parte 104 case; but, considering the intense competition for traffic, not only among rail carriers themselves, but between rail carriers and other forms and methods of transportation, and considering also the fact that the conclusions reached by the Commission in the general case have the effect of revolutionizing the practice with respect to terminal services that has been in effect over a long period of years, and under and to which the industries of the nation have attuned their operations, it requires optimism indeed to expect that the rail carriers will go into a good-natured huddle and so coordinate their efforts and suppress their individual selfish interests as to bring about that equality of treatment which the Interstate Commerce Act was designed to foster and insure. Must the Staley Company suffer from this discrimination and injustice until such time as the carriers voluntarily make a study of all of the plants at which terminal service is now performed without extra charge before it can obtain any hope of relief? Even if the Interstate Commerce Commission undertook the obviously huge and expensive task of investigation and making determinations with respect to all other plants, would not at least several years elapse before any definite results could be achieved?

Again, is not the revolutionary practice of imposing a terminal charge on the traffic of the Staley Company wholly at variance
92 with the nation-wide and long-continued practice under which the presently existing rate structure was developed, so that it must be presumed the carriers' line-haul rates and charges include compensation for the terminal services (necessarily incident to rail transportation) which has always been performed by the carriers without additional cost or expense to the patron?

We believe that a just answer to these questions will convincingly demonstrate that the imposition of this spotting charge is unfair to and unjustly discriminatory against the Staley Company.

In this connection we again point out that at present the Wabash is the only carrier serving the plant and in a position to exact the spotting charge. The Wabash does not control the situation at

any other other plant. Many of the plants throughout the country, including those concerning which testimony was presented at the latest hearing in this proceeding, are not even served by the Wabash. The same thing is true of plants within the Decatur district. These situations are cited to demonstrate the utter inability of the Wabash to remove the discrimination against the Staley Company, except by abrogating the charge applying on Staley Company's traffic, and this the order of May 6, 1941, forbids. Should the Wabash initiate proceedings with a view to publishing spotting charges at other industries served by it comparable with the charge here under discussion it would immediately suffer the loss of all competitive traffic for such industries in which it now participates. In addition, the cost of making the necessary studies to determine whether such a charge would be justified, and, if so, the measure thereof, would be prohibitive.

93

III

VOLUME OF TRAFFIC ALONE DOES NOT JUSTIFY THE TERMINAL CHARGE

The chief handicap from which the Staley Company suffers in this proceeding lies in the fact that through initiative and good management it has become prosperous and developed a large and steady traffic, as a result of which the carriers have enjoyed large and welcome revenue. Railroad yards and terminal facilities must, of course, be provided by the carriers to handle traffic of all industries, whether great or small. It is difficult to compare the service per car performed by a shipper and receiver of many cars, in a given period of time, with that performed per car for the shipper of only a few cars in the same period. The Commission in its report enumerates the number of cars moved by the carriers to and from the various loading and unloading points within the Staley plant. Some of these figures are given for the year 1937, while others are for the year 1939. They indicate, however, a total movement of over 32,000 cars per annum. The volume of traffic is so great as to eclipse that of any other individual shipper or receiver of freight in the Decatur district. The rail facilities and service necessary to handle this large volume of traffic in the manner and with the expedition required by law and modern business practices are necessarily large. A casual observer might be justified in getting the impression that the service rendered the Staley Company is out of proportion to that rendered the smaller
94 shippers. It seems the Commission has failed to grasp the fact that, while the intensive use by the Staley Company of its property and equipment has developed a very heavy and

continuous flow of desirable traffic to and from the plant, and while the total volume of service necessary to make such movement possible is necessarily large, the unit cost per car may well be less than the unit cost per car of handling other traffic in the Decatur district. The operating employees who have first-hand knowledge testified that the difficulties encountered and time consumed in spotting cars on team tracks and on tracks of industries other than the Staley Company within the Decatur district are, in their opinion, greater per car than are those incident to spotting cars within the Staley plant. The Commission has paid scant attention to this testimony.

It has on the other hand laid great stress upon the fact that the switching service within the plant is to a large extent co-ordinated with the needs and operations of the plant. It is conceded that the Wabash and the Staley Company have collaborated to the end that the service here under discussion has been reduced to its simplest terms. To accomplish that result necessarily requires co-ordination of effort, and we do not think it will be denied that such co-ordination redounds to the mutual benefit of the server as well as the served. The importance of such co-ordination cannot be disregarded by any carrier in serving even the casual receiver of freight who may not have more than a few cars delivered to him on a team track in any metropolitan or congested area.

The business of the rail carriers would in this age be in a
95 deplorable condition if the greatest attention were not given to the co-ordination of their service with the "needs and operations" of those on whom they rely for their revenues. The testimony of witnesses offered by the Wabash and the industry is that both are striving so to conduct the service as to co-ordinate the efforts of the carrier and the industry, to simplify the operation, and that whenever any imperfections have been discovered both parties have united their efforts to bring about improvements.

It is this very feature that distinguishes the situation here from that referred to in the Chairman's concurring opinion (sheets 41, 42). The Chairman recognizes this distinction and calls attention to the fact that in the General Electric case "the industry was performing the switching service and was not willing to permit the railroad to perform it." The majority report, however, seems to impute to what we regard as a laudable accomplishment a sinister, if not reprehensible, attribute. We believe it has drawn an improper and unjustifiable inference from this cooperation between the carrier and the industry.

First, by assuming that in some way the difficulty and cost of rendering the service is thereby increased for the sole benefit of the patron; and

Second, that the industry must pay the supercharge because, perchance, it profits from such co-ordination.

We have, therefore, an incorrect conclusion based upon
96 an erroneous assumption or improper inference contrary to the testimony of record, which is that the collaboration between the industry and the Wabash was at all times conducted with a view to simplifying the service and consequently performing it as cheaply as possible. To render to a large plant enjoying a heavy volume of business the legal terminal service to which it is entitled under the law necessarily requires the co-operation of the industry and the carrier and the co-ordination of their efforts, and the large volume of traffic afforded the carriers by the Staley Company should not and cannot lawfully constitute justification for imposing a charge which is not an incident of the movement of a lighter volume of traffic.

What we have been endeavoring to convey to the Commission is well stated in the terse and concise language of the concluding paragraph of the dissenting opinion (Sheet 43), which is quoted as follows:

"If the 40 elevators, mills, and other buildings constituting the plant of the Staley Company were each owned and operated by a separate concern, the railroads would be required to serve each of them at the line-haul rate. The real difficulty here is size. If the size of an industry is hereafter to determine whether it may or may not have terminal service without extra payment, we should immediately establish some uniform standard so that the permissible limits may be known."

We are impressed with the wisdom and justice which characterizes the conclusions of the dissenting Commissioners and commend them to the majority in the hope that upon further
97 consideration they may be made the basis of a revised report which will satisfactorily dispose of these proceedings.

Respectfully submitted,

N. S. BROWN,
L. H. STRASSER,
Attorneys for Petitioner.

1667 RAILWAY EXCHANGE BUILDING,
ST. LOUIS, MISSOURI, *June 20, 1941.*

CERTIFICATE OF SERVICE

I hereby certify that I have on this date mailed to each party of record in these proceedings a copy of the foregoing petition.

Dated at St. Louis, Missouri, this 20th day of June 1941.

LOUIS H. STRASSER,
Of Counsel for Petitioner.

98 *Appendix D to complaint*

Before the Interstate Commerce Commission

Ex Parte No. 104, Part II

TERMINAL SERVICES—A. E. STALEY MANUFACTURING COMPANY

I. & S. Docket No. 4736

SWITCHING CHARGES AT DECATUR, ILLINOIS

MOTION TO VACATE ORDER AND PETITION FOR RECONSIDERATION

Now comes A. E. Staley Manufacturing Company and presents this its motion to vacate the order entered May 6, 1941, in Investigation and Suspension Docket No. 4736 and petitions the Commission to reconsider the report entered the same date, which is entitled in Ex Parte No. 104 Part II and embraces said I. & S. 4736, and for further action and relief as hereinafter prayed, and in support of said motion and petition respectfully shows:

99 I

The interchange tracks referred to as Burwell yard, the existence and use of which is given controlling importance in the findings and conclusions of the Commission, no longer exist. The tracks were disconnected, permanently abandoned, and have been in process of physical removal since the last hearing in April 1940. The lease under which they were used by the Wabash has been cancelled, as stated below.

Illustrating the determinative significance which the Commission attached to the presence and employment of the interchange tracks is the fact that there are six findings of fact in the Commissioner's report and five of these findings refer specifically to the tracks designated as Burwell yard. The crux of these findings is expressed in the opening clause of Finding 4:

"That tracks in the Burwell yard are reasonably convenient points for the delivery of traffic to the Staley Company; tracks in the Burwell yard are reasonably convenient points for the receipt of such outbound traffic of the Staley Company as moves to that yard; and that tracks in the storage and general yards of the Wabash are reasonably convenient points for the receipt of such outbound traffic of the Staley Company as does not move through the Burwell yard but through the west end of the plant."

Likewise, of the six numbered paragraphs of conclusions
100 in the report the first three specifically refer to Burwell yard; and the essential conclusion is expressed in par. 1 that the transportation service covered by the line-haul rates begins and ends with the receipt and delivery described in the above quoted finding.

This is substantially a repetition of the finding and conclusion found in the 55th supplemental report, entered May 22, 1936, 215 I. C. C. 656 at p. 660, upon which the Commission condemned the allowance paid by the carriers for the service performed by the Staley Company after the carriers had switched the cars to the Burwell yard. Moreover, when these findings are viewed in the light of the original decision in Ex Parte 104–II, it is plain that the Commission has here rested its decision heavily upon the very presence of interchange tracks. The pertinent language of the original or main decision in Ex Parte 104–II, 209 I. C. C. 11, is found in the following headnote to that report:

"2. At many industries, delivery and receipt of freight is effected by carriers on interchange tracks because of interference or interruption to the work of both the industry and the carrier which would be ecountered beyond such tracks. Under such circumstances, delivery or receipt on such tracks constitutes delivery or receipt under the line-haul rates."

The difference in the situation today, as compared with that obtaining at the time of the 55th supplemental report, is fundamental, however, and deserves a fundamental difference in treatment, which the report erroneously fails to give. The car-
101 riers formerly placed the inbound cars on the tracks in so-called Burwell yard and from those tracks the Staley engines took them and performed the switching service, at the convenience of the Staley Company, receiving an allowance. There are now no such tracks in existence, and cars of freight cannot be taken initially to Burwell yard or to any interchange tracks, since none exist, but are actually taken through and initially placed within the Staley plant by railroad engines. Consequently it cannot now be said with any force whatsoever that "delivery is effected by carriers on interchange tracks because of interference or interruption which would be encountered beyond such tracks." There now are no such tracks.

The circumstances surrounding the fundamental fact as to these former interchange tracks may be described briefly: The record made at the hearings on reopening, June 27, 1938, at Chicago and April 23, 1940, at Decatur, include as Exhibit 14 a copy of a lease made by the Staley Company to the Wabash Railway

dated June 1, 1938, but effective as of December 10, 1937, which was approved by the District Court at St. Louis and Springfield. The circumstances of this lease are fully explained in the record. It gave the Wabash Railway the use of the Burwell yard, intended as auxiliary or additional to the general facilities of their large general yards in Decatur.

102 The Staley Company's position in regard to this lease and in regard to these tracks is fully stated in the brief on rehearing, filed May 29, 1940 (pp. 82–3) and in the exceptions filed November 9, 1940 (pp. 29–33). It had been thought by all that the facts and circumstances in regard to the lease transaction were wholly immaterial, but they were disclosed in full in the interest of a complete record.

Since those hearings, it was decided by the management of the Staley Company, concurred in by their undersigned counsel, that it was not good policy or good practice for any railroad company to own, or have ownership rights, such as afforded by lease, over any tracks or land on the industrial premises. This decision was induced in large part by the pronouncements of this Commission, notably in the Sioux City Terminal case, 241 I. C. C. 53. Accordingly, on February 15, 1941, the Executive Committee of the Board of Directors of the Staley Company adopted the following resolution:

"Resolved that the A. E. Staley Manufacturing Company does hereby cancel a certain lease or instrument by it made the first day of June 1938, with Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers of Wabash Railway Company. The officers of this corporation be and are hereby empowered and directed to make, execute and deliver a written notice to said Receivers of the cancellation of said contract or indenture as therein provided."

103 Thereupon a formal notice bearing the same date was served upon the receivers of the Wabash Railway Company of the termination of the lease of June 1, 1938, effective March 1, 1941. Accordingly, the tracks in question, comprising the Burwell yard, were taken out of service beginning Monday morning, March 3, 1941; the tracks have been disconnected, are being dismantled and are permanently out of existence.

The whole subject matter of the proceedings under I. & S. 4736 looks to the future, not to the past; and the order deals with the legality of the schedules involved as to their future application to the traffic and transportation in question. The findings do not now square with the facts; and in view of this circumstance the report is clearly erroneous and should be reconsidered.

II

The report and order are erroneous in holding that the services now performed by the carriers in the delivery and receipt of carload traffic at the Staley plant is not covered by the established freight rates and at the same time holding that these same freight rates do cover the services performed on traffic to and from the adjoining plant of the Mississippi Valley Structural Steel Company. This error arises in Finding number 6 of the report, wherein the Commission approves the inclusion of deliveries at the Mississippi Valley Structural Steel Company plant
104 under the line-haul rates while disapproving such delivery to the Staley plants:

"The services rendered to and from points of loading and unloading at the plant of the Steel Company, for which no additional charge is now made are not in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs."

The fact is that as to all shipments moving via the three railroad respondents in I. & S. 4736, cars received from and delivered to the Steel Company plant must and do move through the Staley plant. They are handled in exactly the same manner as the shipments to the Staley plant. In that circumstance it is impossible to reason that the amount of service involved in a delivery to the Steel Company is less than that rendered on a car placed for loading or unloading at Staley. The actual physical transportation performed is necessarily greater in the case of cars moving to the Steel Company since those cars not only go into the Staley plant, but pass the points where they would be delivered if destined thereto and continue on their journey for a greater distance. Finding number 6 is satisfactory to the Staley Company in so far as it approves spotting without extra charge at the Steel Company, but it is wholly inconsistent with the preceding findings, under which, as to cars handled from or to the Staley plant directly to or from the general yards of the Wabash, the service under freight rates stops at the general yards.

105 The foregoing paragraphs deal with the facts as they existed until recently and as reflected in the record. Since the abandonment of Burwell yard, the Wabash Railway of its own volition has changed the method of serving the Staley Company as well as the Steel Company to the extent that at present not only cars for the Steel Company but all cars of miscellaneous freight such as bags, boxes, cans, sulphur, etc. are handled inbound through the west end of the plant, instead of through the east end of the plant as before. All cars for the Steel Company

are brought into the west end of the Staley premises and put on track 4–B adjacent to the scale house from which they are subsequently taken by the Wabash engines for placement in the Steel plant. This, at least for the time being, is the method of handling the traffic of the two plants; and of course the carriers may again change it any time they desire. More than ever, it demonstrates the fundamental conflict between the findings of the report treating the Staley shipments and Finding 6 concerning deliveries to the Steel Company.

III

The report is erroneous in that it fails to recognize and give relief from the discrimination and prejudice against the Staley Company in the matter of terminal services and charges as compared and contrasted with all of its very numerous com-
106 petitors, large and small. There is extensive evidence on this point which is uncontradicted and which shows affirmatively that none of Staley's competitors pay a spotting charge similar to that demanded of Staley, while all of these competitors receive transportation services including final spotting at places of loading and unloading. There is competent evidence that the service at some competing plants is under similar circumstances and conditions, and there is no evidence of any dissimilarity, not to say such a difference in conditions as could serve to justify the discrimination. This evidence is fully treated in the briefs and exceptions of the Staley Company and of respondent carriers. Yet the showing is given no effect whatsoever in the findings of fact and conclusions and the evidence is dismissed in a single paragraph at the bottom of sheet 36:

"Considerable evidence was introduced showing that spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

This treatment of the subject, aside from its cavalier bearing
107 which is wholly unfamiliar in Commission reports and actions generally, is erroneous and arbitrary in several respects, and gives rise to manifold injustice.

1. It is axiomatic, as a matter of law, that the Commission has no power or authority to condemn and order withdrawn the

schedules under suspension (and which cancel the spotting charge), unless those schedules will result in violation of law. The supposed violation, upon which the order of cancellation is based, is that the Staley Company is getting a preferential service, or a service not accorded shippers generally. Yet this finding, involving as it does a comparison, must rest not only on a consideration of what service Staley gets, but also what other shippers get. As to this, the uncontradicted testimony is that all competitive industries enjoy the free service of placing cars in their plants, some of vast size. It is no answer to state that there is no "satisfactory" showing of substantial similarity of circumstances and conditions at these competing plants where there is some evidence of such similarity. Moreover the deficiency in the evidence, if any, would destroy all basis for holding that it would be unlawful not to impose against Staley the charge which the respondents desire to cancel and which they published only on the premise that free service was preferential because under like circumstances such service was not performed elsewhere.

Parenthetically, it should be noted that the showing made does not stop with conditions within the corn and soya bean
108 industry, although those conditions seem of paramount importance at least so far as section 3 of the Act is concerned. It is shown, also, that Staley is the only industry anywhere which pays such a charge. The two largest competitors of Staley in the soya bean industry have plants right in Decatur which are served from the very same railroad yards; and the freight rates on their shipments do not stop at the yards but are taken to include the service through to the points of placement in the plants.

2. The conclusion upon which the Commission orders cancelled the schedules which are under suspension in I. & S. 4736, is not sufficient in law to support such order. This conclusion appears on sheet 39:

"4. That the existing charge of $2.50 per car for the services described in the immediately preceding finding has not been shown to be unlawful."

If we should grant, for sake of argument, that the existing charge is not proven to be unlawful, it would not follow that it necessarily would be unlawful for the carriers to cancel such charge. There is no mere technicality for, as we have already pointed out, the report itself discloses that there is no such proof concerning conditions at other plants as would warrant the Commission in concluding that to cancel the charge would create undue preference or other unlawful results.

3. In refusing to recognize and ameliorate the fundamental violation of this law (Section 3) which has been shown by the

evidence above recited, and which it is the office of the
109 proposed schedules to correct, this report again indefinitely postpones the performance of the Commission's statutory duty. The showing made presents a definite challenge to the Commission as the tribunal charged with administrative enforcement of the Interstate Commerce Act. It is a challenge to do justice and give equal treatment. If there is a bona fide program or purpose of establishing spotting charges for placement services at large industries, the Staley Company has never indicated particular purpose to secure individual exemption from the practice when generally observed at all industries of like situation. Yet it offends common sense and all ideas of common justice to suppose that the Staley Company (which has made every effort to adopt every suggestion from the Commission's staff and has left to the carriers to select the methods of performing the service best suited to their own convenience), is for some extraordinary and unexplained reason different from industries generally so that it should go on paying a charge which is not being imposed anywhere else.

The decision of the Supreme Court in United States et al. v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co., 294 U. S. 499, is squarely in point. That decision condemned such treatment as is here used and forbids the postponement of action necessary to afford all the equal protection, as well as the equal obligation, of the laws. The effect of that case is to require the Commission
to permit the tariffs hereunder suspension to take effect
110 (instead of condemning them), thus eliminating the existing unjust discrimination and the undue prejudice which do now exist against the Staley Company. If the general situation warrants and requires further investigation as to other industrial plants, and particularly Staley's competitors, the Commission is free to act with equal and simultaneous effect on all situated alike. It is not free to persecute one individual while closing its eyes to others. As the court said in the Milwaukee case:

"This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come."

That the postponement of action removing Staley's discrimination inherent in the report is not a mere trifle, but is of essential importance, is illustrated by the history of this case, which is imperfectly and incompletely stated in the report.

This being an I. & S. case, under the mandate of Section 15 (7), the Commission was in duty bound to expedite its investigation and its suspension power was limited to the seven months statutory period. Yet, after the suspension order of November 21,

1939, the hearing was not held until April 23, 1940, briefs were filed promptly May 29, tentative report was entered September 27, 1940, oral argument held December 13, 1940, and not until May 6, 1941, or fifteen months after the suspension order—

111 more than twice the statutory period elapsing—comes the Commission's final decision. The real reproach lies in the fact however, that unquestionably Ex Parte 104–II was reopened in view of the circumstances of the then pending cases brought by the Staley Company in U. S. District Court at Springfield. In an action of mandamus, which the Staley Company reluctantly instituted seeking "equal treatment" by the respondents of itself and its competitors at Decatur and elsewhere, the Commission intervened and filed motion to dismiss on the general ground that the Commission had exclusive jurisdiction over the subject matter. Plaintiff countered with a cross-motion. In preliminary hearing on June 12, 1937, counsel for the Commission insisted that the Commission was proceeding with a program looking to uniform treatment of the spotting question at all plants; and it quite apparently was as a result of that incident that the Commission granted the Staley Company's petition and reopened 104–II, which it had three times refused to do. The plain truth is that the Court and the parties looked to the Commission to proceed with promptness in the matter and more than four years have passed without definite result in giving the Staley Company a fair deal. We are now told that if there is anything in our complaint it is only subject for future investigation. How inept and meaningless are the observations which we have just quoted from the Commission's decision.

112 IV

Finding number 3 is erroneous, contrary to the facts and against the manifest weight of the evidence. It reads, our italics:

"3. The movements between points of loading or unloading within the plant area of the Staley Company and the Burwell yard, the storage yard, or the general yard of the Wabash, for which respondents now make a charge of $2.50 per car, in many cases are not direct but involve one or more additional movements, such as to scales, intermediate storage tracks, or cleaning tracks, and *in all instances are, and must be, coordinated with the industrial operations of the Staley Company and conform to its convenience.*"

This is a false conclusion of fact, and the importance of the error is emphasized by the last paragraph of the separate expression in Chairman Eastman's concurring opinion. The chair-

man cites the decision of a third of a century ago in the General Electric Case, 14 I. C. C. 237, as illustrating that "there is nothing new" in what the Commission is here doing, and as answering the arguments of the parties made on the facts developed in this record.

There is such a total disimilarity in the facts shown here as compared with those developed in the General Electric case that, accepting and endorsing that decision unreservedly, and measuring the action of the Commission here by the principles effec-
113 tuated there, it is inescapably apparent that the Commission now does "do something new" and, moreover, goes directly contrary to its previous, cited decision.

1. Without retrying that case, it will be found on a study of the General Electric report, that the General Electric plant, was equipped with 12 miles of "standard gauge storage and connecting switching tracks" on which there were 2 steam and 4 electric standard gauge engines operated continuously by the plant. In addition thereto, the plant was described by the Commission as having

"7 miles of narrow gauge electric tracks which cross and recross the standard-gauge system like a gridiron, and upon which 19 motors are kept in use in delivering raw material to the shops and in moving partially finished products from one shop to another."

There were 200,000 loaded cars moved annually within the works over these narrow gauge electric tracks, plus 35,000 intra-works movements on standard gauge tracks. This against 31,258 loaded shipments moving into and out of the plant by railroad. There is no duplication whatever of these conditions at the Staley plant, and the record here so shows.

2. The Commission's report stated that the General Electric Company "now demands compensation for doing that which it claims the defendants are under obligation to do, but which it does not and could not permit them to do." In other words,
114 while the General Electric Company wanted an allowance, it would not let the carrier do the work for which allowance was sought, thereby indicating and inviting the inference that the work in some important way conflicted with or required coordination with plant processes. The Staley Company not only is not demanding compensation, and is simply requesting the carriers to continue doing what they are now doing in the way of receiving and delivering carload shipments at this plant the same as at other plants which they serve, but it also makes this sincere and plain avowal of the complete absence of plant processes which could in any way affect the performance of the service.

Staley's position approaches the opposite extreme of a complete abnegation of industry to avoid the slightest possibility of interference.

3. The Commission's conclusion in the General Electric case was that the railroads "cannot be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry." There is no such condition here. The testimony is uncontradicted that the tracks in the Staley plant are simply and solely designed for the reasonable accommodation of the large volume of inbound and outbound movement of freight with no network designed to facilitate intra-works movements of materials in process of manufacturing.

115 Finding number 3 is fundamentally erroneous in ignoring the fact that for such movements as there are of materials from the elevator to the mills, or from one truck to another, all are performed by Wabash locomotives, and special charges are assessed under terms of a Wabash tariff filed with the Illinois Commission. This is under a practice prevailing at all industries and recognized by the Commission itself in its numerous industrial railways cases as entirely proper and desirable. It is the grossest possible misconstruction of the facts to seize upon this intraplant service, which is paid for, as an operation of the industry amounting to an interference with the receipt and delivery of freight.

In its main report, 209 I. C. C. 11, the Commission fully defined the circumstances of interruption and interference which might mark the end of a carrier's obligation and indicated that where, in plants of large magnitude, the service was performed at the carrier's convenience and without interruptions it was included within the compensation of the freight rate. The Staley company has adopted every suggestion of the Commission's staff and has put it up to the railroads to do the work in their own way and at their own convenience. The respondent carriers in this case have said very plainly to the Commission that the services at the Staley plant are now performed by them at

116 their convenience and according to their own methods and without interruptions and interferences due to the demands or requirements of the industry.

We submit the Commission should not contradict these conclusions and nullify the action of the respondent carriers without a clear reference to sound grounds for so doing, and in failing to find or report any such grounds the Commission repudiates the principles of Car Spotting Charges, 1915, 34 I. C. C. 609, and

adopts the position that an industry which is of large size and has a large volume of traffic must pay for its spotting service regardless. If that is to be so, such new rule should be promulgated for all large industries and not applied alone to Staley.

V

The report of May 6, 1941, contains other and manifest errors of fact and of law. It is against the manifest weight of the evidence and the findings and conclusions are not supported by any substantial evidence.

Wherefore, A. E. Staley Manufacturing Company moves the Commission to vacate and set aside the order of May 6, 1941, in Investigation and Suspension Docket No. 4736 and prays that the Commission will set aside its decision, reconsider the
117 whole matter and enter further report and order upon such further proceedings as may be appropriate and necessary.

Respectfully submitted.

C. C. LE FORGEE,
General Counsel.
ROBERT N. BURCHMORE,
NUEL D. BELNAP,
LUTHER M. WALTER,
JOHN S. BURCHMORE,
Attorneys.

LE FORGEE, SAMUELS & MILLER,
Citizens Bank Building, Decatur, Ill.
WALTER, BURCHMORE & BELNAP,
2106 Field Building, Chicago, Ill.
JUNE 17, 1941.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in these proceedings, by mailing a copy thereof properly addressed to each party whose appearar was noted at the hearing.

Dated at Chicago, Ill., this 17th day of June 1941.

JOHN S. BURCHMORE,
Of Counsel.

[File endorsement omitted.]

119 In The District Court of The United States

[Title omitted.]

Answer of Interstate Commerce Commission

(Filed July 6, 1942)

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs I and II of the complaint, the Commission admits that the plaintiffs' corporations operate railroads as common carriers in interstate commerce and reach and serve the city of Decatur, Macon County, Ill., within the venue of this Court, and that the Court has jurisdiction of the subject matter of the action herein.

120 II

Answering the allegations of paragraph II of the complaint, the Commission admits that the A. E. Staley Manufacturing Company, hereinafter called the "Staley Company," is a corporation under the laws of the State of Illinois and operates a manufacturing plant in or near the city of Decatur, Macon County, Ill., and is served by several rail carriers engaged in interstate commerce, including the plaintiffs herein.

III

Answering the remaining allegations of the complaint, the Commission alleges that, upon its own motion, under order entered July 6, 1931, a proceeding was instituted to inquire into and investigate practices of carriers by railroads subject to the Interstate Commerce Act affecting the operating revenues and expenses of such carriers, Part II thereof, dealing with terminal services of Class I rail carriers; following hearings the Commis-

sion issued and entered its report in such proceedings on May 14, 1935, such report and decision being designated and referred to as Ex Parte No. 104, Practices of Carriers affecting Operating Revenues or Expenses, Part II, Terminal Services (209 I. C. C. 11); as a part of the proceedings and hearings above referred to, terminal allowances to the "Staley Company" at Decatur, Ill., were considered and decided by the Commission under its 55th Supplemental Report to Ex Parte 104, Part II, which report was issued and entered on May 22, 1936 (215 I. C. C. 656), wherein it was decided that allowances to the "Staley Company" by the carriers covering spotting or switching services within the plant area, as then performed by the "Staley Company", were in violation of section 6 (7) of the Interstate Commerce Act, and the carriers were ordered to cease making such allowances; the effective date of the order of May 22, 1936, in the 55th Supplemental Re-
121 port, Ex Parte 104, Part II, was extended from time to time, along with a number of other such orders in similar cases, pending court actions, the Staley case included, seeking to have the courts declare such orders void; court action of the "Staley Company" was dismissed, without prejudice, on May 19, 1938, following the sustaining by the Supreme Court of the United States of similar orders in other cases appealed to that court (United States v. American Sheet & Tin Plate Co., 301 U. S. 402; Goodman Lumber Co. v. United States, 301 U. S. 669; A. O. Smith Corp. v. United States, 301 U. S. 669, and United States v. Pan American Petroleum Corp., 304 U. S. 156); on November 15, 1937, the rail carriers serving Decatur, Ill., including plaintiffs herein, established, under tariff filed with the Commission, a charge of $2.27 per car to cover the spotting or switching service within the area of the "Staley Company" plant, later increased to $2.50 protest against which being filed by the "Staley Company" and denied by the Commission; petitions to reopen the order of May 22, 1936, for reconsideration and rehearings, on the ground that the spotting or switching service would thereafter be performed by the carriers or one of them, as a substitute for the previous allowances to the "Staley Company" were filed on June 16, 1936, and on May 29, 1937, by the "Staley Company", and such petitions were denied by the Commission on November 9, 1936, and June 8, 1937, respectively; a third petition to reopen the order of May 22, 1936, for reconsideration and rehearing was filed by the "Staley Company" on March 16, 1938, which said petition was granted by the Commission under order of April 8, 1938, as amended by order of May 4, 1938, to permit presentation of evidence of the changed situation in regard to the spotting or switching service at the Staley plant; following hearings under

122 the orders of April 8, 1938, and May 4, 1938, the Commission, on its own motion on July 29, 1939, reopened those proceedings for further hearings; while those proceedings were pending, plaintiffs herein, being three of the several rail carriers serving the "Staley Company" at Decatur, Ill., filed new tariffs to become effective December 15, 1939, the schedules under which proposed cancellation of the $2.50 per car spotting or switching charge within the Staley plant area, which said tariffs and schedules thereunder were suspended by the Commission under proceedings in I. & S. No. 4736, and being thereafter heard and considered together with the hearings and consideration under the 55th Supplemental Report, Ex Parte 104, Part II; that in said proceedings the parties thereto, including the plaintiffs herein, were, and each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon matters covered in and by the report and order of the Commission, hereinafter referred to and identified, were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that in said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said plaintiffs by their counsel, including many of the questions raised by the plaintiffs in this action; that thereafter, on May 6, 1941, the Commission issued and entered its report and order in said proceedings, covering both the 55th Supplemental Report, Ex Parte 104, Part II, and I. & S. 4736, such report and order being attached to the complaint herein as Appendix A; thereafter petitions of the "Staley Company", and of the plaintiffs herein, to reopen the said report and order of May 6, 1941, for reconsideration and rehearings, were denied by the Commission at a general session on July 31, 1941.

123 The Commission further alleges that the findings and conclusions in said report and order were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel.

The Commission further alleges that said report and order of May 6, 1941, were not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support them; that in making said report

and order the Commission did not exceed the authority conferred upon it by law, and the Commission denies each of and all the allegations to the contrary contained in the complaint.

IV.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of May 6, 1941.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By ALLEN CRENSHAW, *Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel, Of Counsel.

124 [*Duly sworn to by Wm. J. Patterson jurat omitted in printing.*]

[File endorsement omitted.]

126 In the District Court of the United States

[Title omitted.]

Answer of the United States of America

Filed July 21, 1942

The defendant, The United States of America:

1. Admits the allegations of Paragraphs I through V of the complaint.

2. Admits the allegations of Paragraph VI, except that it alleges that the date of the first petition for rehearing by the Staley Company was June 16, 1936, rather than June 26, 1936, as alleged by plaintiffs, and except that it alleges that it has no knowledge sufficient to form a belief as to the truth of the matters alleged in the fifth subparagraph thereof and therefore denies such allegations. For a more detailed statement concerning the history of this case the Court is referred to Paragraph III of the answer of defendant Interstate Commerce Commission, which paragraph is incorporated herein by reference.

3. Admits the allegations of Paragraphs VII and VIII.

4. Denies the allegations contained in Paragraphs IX through XII in so far as they are not dealt with in, or are inconsistent with, the statements or conclusions expressed in the Commission's report and order of May 6, 1941.

127 5. Except as hereinafter indicated, denies the allegations contained in Paragraph XIII and particularly that the Commission acted arbitrarily, illegally or otherwise in excess of its power. Admits that the Commission's report contained the findings set forth in subparagraphs (1), (3), (5), (7), and (8) and admits that plaintiffs in their petitions for rehearing made the statements alleged in subparagraph (7).

6. For further answer alleges that plaintiffs herein have no standing to contest any alleged discrimination against or prejudice to the Staley Company resulting from the Commission's order, but that the said Staley Company which is not a party to these proceedings can alone raise such issue.

Wherefore, it is respectfully prayed that plaintiffs' complaint be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

THURMAN ARNOLD,
Assistant Attorney General.
HOWARD L. DOYLE,
United States Attorney.

I certify that a copy of the foregoing answer was this day mailed to the following persons: N. S. Brown, Esq., R. F. Butler, Esq., William B. Browder, Esq., Elmer A. Smith, Esq., 135 East Eleventh Place, Chicago, Illinois. Graham & Graham, Reisch Building, Springfield, Illinois, Attorneys for Plaintiffs. Allen Crenshaw, Esq., Interstate Commerce Commission, Washington, D. C., Attorney for Interstate Commerce Commission.

ROBERT L. PIERCE,
Robert L. Pierce.

[File endorsement omitted.]

JULY 17, 1942.

129 In United States District Court

[Title omitted.]

Order granting leave to file an intervening petition August 31, 1942

Comes now the A. E. Staley Manufacturing Company by Messrs. LeForgee, Samuels and Miller, its attorneys, and on

motion of the said attorneys, it is ordered by the court that leave be and is hereby given the said A. E. Staley Manufacturing Company to file an Intervening Petition herein.

131 In District Court of the United States

[Title omitted.]

Intervention of A. E. Staley Manufacturing Company

(Filed Aug. 31, 1942)

To the Honorable JUDGE OF THE UNITED STATES DISTRICT COURT, *for the Southern District of Illinois, Southern Division:*

Now comes A. E. Staley Manufacturing Company, a corporation, in accordance with the provisions of Sections 212, 213 of the Judicial Code (USCA Title 28, Sec. 45a) and represents that it has an interest in the matters involved in this proceeding and desires to intervene and be made or considered an intervening plaintiff. In support of this intervention petitioner shows:

132

I

That petitioner is a corporation organized and existing under the laws of the State of Delaware and, as hereinafter more fully set forth, is and at all times hereinafter mentioned has been engaged principally in the business of manufacturing and selling the products of corn and soybeans, with principal office and manufacturing plant at Decatur, Illinois.

II

The petitioner adopts and joins in the averments of Sections III, IV, V, VI, VII, VIII, IX, X, XI, XII and XIII of the complaint of plaintiffs Wabash Railroad Company, et al.

III

That petitioner was interested in the controversy or question before the Interstate Commerce Commission involved in the report and order sought by the complaint of the Wabash Railroad Company, et al., to be annulled and set aside, and petitioner was a party to the record and participated in the proceedings before said Commission which resulted in the aforesaid order.

IV

That petitioner is and for many years past continuously has been engaged in the manufacture of corn products and other grain products and by-products, in its aforesaid plant at Decatur, and in the course of its business has received at its said plant large quantities of grain, soybeans, raw materials, as well as other material, including oils and other processed articles and ingredients necessary for the operation of its plants and
133 production of its products; and it has shipped out large quantities of manufactured products by it produced as aforesaid, together with large quantities of other freight; and all of said materials and commodities have been shipped in and received by complainant at its said plant and shipped out by complainant from its said plant in railroad cars over the routes of defendants and their connections, from and to points in the several states of the United States as well as in foreign countries, and a large volume and proportion of such shipments have been in interstate commerce.

V

That in the conduct of its aforesaid business, petitioner encounters and has encountered at all times past the competition of various other manufacturers and processors of like products of corn, including American Maize Products Company, Corn Products Refining Company, Clinton Company, Hubinger Company, Penick & Ford, Ltd., Inc., and The Union Starch & Refining Company, which are corporations engaged largely in the production and marketing of corn products. That petitioner also encounters and has encountered in its aforesaid business the competition of various other manufacturers and processors of like products of soybeans, including Allied Mills, Inc., Archer-Daniels-Midland Company, Funk Brothers Company, Purina Mills, and Spencer Kellogg Company, corporations engaged in processing of soybeans and manufacturing and marketing products thereof. The plants operated by said competitors, wherein said competitors manufacture and process aforesaid materials in competition with petitioner, are particularly named and described in Section VII hereof.

134 VI

That petitioner's aforesaid plant at Decatur, by reason of the size of its business and the volume of its railroad traffic, inbound and outbound, approximating 3,000 carloads per month, moving

in state and interstate commerce, was designed and laid out with loading and storage platforms and facilities for loading and unloading, and tracks adequate in capacity and suitably located to facilitate the work of the defendant railroads in delivering and receiving carload shipments at said plant with a minimum of inconvenience and expense to the defendant railroads. These tracks are all standard gauge and defendant has no narrow gauge tracks in or about its aforesaid plant; it neither owns nor operates any locomotives or other motive power within said plant; and the manufacturing processes of the plant do not require movements of materials from point to point within the plant in process of manufacture.

That by reason of the aforesaid large volume of petitioner's inbound and outbound shipments, the nature and character of the commodities themselves, it would be impossible to load or unload shipments of grain or grain products or other materials into or out of freight cars when said cars are standing in the yards of the Wabash Railway or at points on the tracks within the plant other than those tracks which are designated and employed as loading and unloading tracks at the various locations within said plant.

That for the compensation afforded by their established freight rates to and from Decatur, the plaintiffs, as well as the Pennsylvania and Baltimore & Ohio Railroads, have and each of the said five carriers has, for many years past moved the cars in
135 which the shipments were transported from and to the aforesaid points of loading and unloading within petitioner's plant, and have assumed the duty of doing so as a part of their obligation under their established freight rates, save and excepting that during the period since November 1, 1937, they have exacted in addition to the freight charges at the established freight rates a special charge of $2.27 per car prior to March 28, 1938, and $2.50 per car since that date, established in a schedule filed by the agent of said railroads, R. A. Sperry, as I. C. C. No. 376, effective November 1, 1937, and subsequently amended.

VII

That likewise at each of the various plants of the competitors of petitioner, named in Section V hereof, there are numerous docks, buildings, and points of loading and unloading of freight, and each of said plants is equipped and served with extensive standard guage railroad tracks, which, as petitioner is informed and believes and upon such information and belief so charges the fact to be, are owned by the industrial company in each case; and the said tracks are used by the railroads in the inbound and outbound movement of cars containing carload traffic received

and shipped by said competitors of petitioner. For the compensation afforded by the established freight rates and without any separate terminal or so-called spotting charges, the railroads serving each and all of the said plants include the placement of the empty and loaded cars at the point of loading and unloading and the removal of cars, loaded and empty, from such points of loading and unloading, as desired and directed by the industrial company.

136 That the aforesaid plant of American Maise Products Company, at Roby, Indiana, which is in the reciprocal switching district of Chicago, the service of placement of cars at the beginning or end of interstate movement is performed by the Pennsylvania Railroad Company, under the established freight rates applying to and from the Chicago switching district and without any plus charges.

That at the plant of the Corn Products Refining Company, at Argo, Illinois, in the Chicago switching district, the service of placement of cars at the beginning or end of their interstate movement is performed by the Belt Railway Company of Chicago for account of all railroads entering the Chicago switching district; and plaintiffs, Illinois Central Railroad Company, Wabash Railway Company, as well as The Baltimore and Ohio Railroad Company, and The Pennsylvania Railroad Company, respectively, absorb and bear the charges and expense of said Belt Railway Company of Chicago for performing such placement service out of their established freight rates on traffic which they move to or from Chicago, consigned to or shipped by said Corn Products Refining Company.

That in like manner at the plant of the Corn Products Refining Company, at Pekin, Illinois, the service of placement of cars at the beginning or end of their interstatement movement is performed by the Peoria Terminal Company and the Peoria and Pekin Union Railway Company for the account of all railroads entering the Pekin-Peoria district, and plaintiffs, Illinois Central Railroad Company, as well as The Pennsylvania Railroad Company and the Illinois Terminal Railroad Company, respectively, absorb and bear the charges and expense of said Peoria Terminal Company and Peoria and Pekin Union Railway Company

137 for performing such placement services out of their established freight rates on carload traffic which they move to or from Pekin or Peoria consigned to or shipped by said Corn Products Refining Company.

That in like manner at the plant of the Union Starch & Refining Company, at Granite City, Illinois, the service of placement of cars at the beginning or end of their interstate movement is performed by the Terminal Railroad Association for the ac-

count of all railroads entering the Granite City district, and the plaintiff railroads absorb and bear the charges and expense of said Terminal Railroad Association for performing such placement services out of their established freight rates on carload traffic which they move to or from Granite City, Illinois, consigned to or shipped by said Union Starch & Refining Company.

That at the plant of Penick & Ford, Ltd., Inc., at Cedar Rapids, Iowa, the service of placement of cars at beginning or end of their interstate movement is performed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and by the Chicago, Rock Island and Pacific Railway, for the account of all railroads entering Cedar Rapids, including plaintiff, the Illinois Central Railroad Company, and said plaintiff absorbs and bears out of its established freight rates the charges or expense of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and Chicago, Rock Island and Pacific Railway, for performing such placement service on carload shipments consigned to or made by said Penick & Ford, Ltd., Inc.

That in like manner at Keokuk, Iowa, The Chicago, Rock Island and Pacific Railway Company performs for the account of the plaintiff, Wabash Railroad Company, as well as for
138 itself, the service of placement of cars at the plant of the Hubinger Company, and plaintiff Wabash Railroad Company absorbs and bears out of the established Keokuk freight rates the expense incurred by The Chicago, Rock Island and Pacific Railway Company in performing such placement service as to carload shipments consigned to or made by said Hubinger Company when moving via the Wabash Railroad.

That at the two plants of Allied Mills at Peoria, Illinois, the service of placement of cars at the beginning or end of their interstate movement is performed by the Peoria and Pekin Union Railway Company or by The Chicago, Rock Island and Pacific Railway Company for the account of all railroads entering the Pekin-Peoria district, and plaintiffs, Illinois Central Railroad Company, and the Illinois Terminal Railroad Company, as well as The Pennsylvania Railroad Company, absorb and bear respectively the charges and expense of said Peoria and Pekin Railway Company and The Chicago, Rock Island and Pacific Railway Company, for performing such placement services out of their established freight rates on carload traffic which they move to or from Pekin to Peoria, consigned to or shipped by said Allied Mills, Inc.

That the plant of Archer-Daniels-Midland Company, at Decatur, Illinois, is served by plaintiff Illinois Central Railroad Company, which performs the services of placement of all cars at the beginning or end of their interstate movement at points

convenient to said industry, whether said shipments move in and out of Decatur via the Illinois Central Railroad or via the lines of other carriers; and in the case of shipments in and out of Decatur via The Baltimore & Ohio, Pennsylvania or Wabash
139 Railroads, each of the latter railroads absorbs and bears the charges and expenses of the plaintiff Illinois Central for performing such placement services out of their established freight rates.

That in like manner the plant of Spencer Kellogg Company at Decatur is served by plaintiffs, Illinois Terminal Railroad Company and Wabash Railroad Company, which respectively perform the services of placement of cars at the beginning or end of their interstate movement on shipments moving via their lines as well as on shipments moving via the lines of the carriers into and out of Decatur; and in the case of shipments in and out of Decatur via the Illinois Central Railroad, Baltimore & Ohio and Pennsylvania Railroads, each of said carriers absorbs and bears the charges and expense of the plaintiff Illinois Terminal or Wabash for performing such placement services out of their established freight rates.

That at the plant of Archer-Daniels-Midland Company, at Chicago, in the Chicago switching district, the service of placement of cars at the beginning or end of their interstate movement is performed by Chicago, Milwaukee, St. Paul & Pacific Railroad for account of all railroads entering the Chicago switching district; and plaintiffs, Illinois Central Railroad Company and the Wabash Railroad Company, as well as The Baltimore and Ohio Railroad Company and The Pennsylvania Railroad Company, absorb and bear respectively the charges and expense of said Chicago, Milwaukee, St. Paul & Pacific Railroad for performing such placement service out of their established freight rates on traffic which they move to or from Chicago consigned to or shipped by said Archer-Daniels-Midland Company.

That in like manner the plant of Funk Brothers Com-
140 pany, at Bloomington, Illinois, is served by the Alton Railroad which performs placement services with respect to shipments moving into and out of Bloomington via the various lines, including plaintiffs, Illinois Central Railroad Company and Illinois Terminal Railroad Company; that the plant of Purina Mills, in the City of St. Louis, is served by Terminal Railroad Association of St. Louis, which performs all placement services for the account of all carriers entering and leaving St. Louis, including the plaintiffs herein; and that as to shipments to and from said plants, the carriers enjoying the line-haul invariably bear and pay the cost and charges of the switching lines for the

services of placement of cars at point of loading and unloading at said industries.

VIII

That on all shipments of carload freight moving to and from all other industries in the City of Decatur, Illinois, which are served by private sidetracks, the plantiff, as well as other carriers reaching Decatur, for the compensation afforded by their freight rates, have included the placement of cars opposite doors, warehouses, or other spots for loading or unloading, as requested and required by the shippers and consignees thereof, without making any additional or separate charges for placement services.

IX

That at the present time and for a great many years past the plaintiffs as well as The Pennsylvania Railroad Company and Baltimore & Ohio Railroad Company, according as they participate in the traffic, and the various lines of other railways with which they connect, by common practice and usage have performed the terminal service of placing cars at the be-
141 ginning or end of their transportation at any and all points of loading and unloading, not only at the plants of various competitors of petitioner named in sections V and VII hereof and at industrial plants generally, for the compensation afforded in their established freight rates published and on file with the Interstate Commerce Commission and without any additional terminal charges for the terminal service aforesaid.

That in and about the City of Decatur, the five aforesaid railroads performing switching and terminal services, one for another, and cars containing shipments which have come in to or are to be taken out of said area by one line-haul carrier are taken from the consignor's or delivered to the consignee's plant or place of business by the terminal carriers; and for such switching services so performed, each of the said railroads has established, and for many years past has maintained, what is known as a reciprocal switching charge, amounting to 14 cents per net ton, maximum $5.45 per car. The said charge was intended by each of the said carriers to cover, and has in fact covered, the movement of the car from the point at which received from the road-haul carrier to the point of unloading on the tracks of the industry or consignee, and in the reverse direction from the point of loading on the tracks of the industry to the point where the car was delivered by the switching carrier to the outbound carrier, and included all switching incident to the

placement of the car at reasonable and convenient point where shipment was loaded therein or unloaded therefrom.

The said reciprocal switching charge was in fact applied by each and every of said carriers on numerous shipments when so handled one for another to and from various industrial
142 plants and warehouses in Decatur; including without exception shipments so handled to and from petitioner's plant prior to November 1, 1937. Subsequent to said date, without any change or limitation or restriction of the schedule naming the reciprocal switching charge, shipments which have moved into and out of Decatur over lines other than the Wabash Railroad, and which have been switched by the Wabash Railroad for the account of other carriers, when consigned to or shipped by petitioner, have been subjected to aforesaid special charge of $2.50 per car over and above the established freight rates, and the Wabash Railroad has charged, exacted and retained such $2.50 charge in addition to receiving from the other carriers the compensation afforded by the aforesaid reciprocal switching charge, and this in contravention of the terms of the tariffs whereby said reciprocal switching charges are absorbed by the other carriers out of the established freight rates.

X

That the aforesaid special charge established and provided in the schedule described in section VI hereof, applicable at the aforesaid plant of petitioner at Decatur, is the only tariff and charge of that nature, kind or description, made or imposed or established by the plaintiffs, or either of them, or by said Pennsylvania and Baltimore & Ohio Railroad at any point or at any station or industry served by any of them; and the said charge has not been maintained or exacted on shipments consigned to or made by any other shipper or receiver of freight at Decatur, or elsewhere, other than petitioner. That the said charge is in violation of Sections 1, 2 and 3 of the Interstate Commerce Act, and the schedule providing said charge is in violation of Section 6 of said Act.

143 XI

That the Commission in and by its report entered the 15th day of May 1934, in the proceeding known as Ex Parte 104, *Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services*, 209 I. C. C. 11, established the definition and rule and stated the limitations of terminal services of railroad companies reasonably included within the freight rates and held

that when a carrier is prevented from performing an uninterrupted service at the point of loading or unloading, within the confines of an industrial plant, because of some action or disability of the industry or its plant, the carriers' duty with respect to the delivery or receipt of cars does not extend beyond the point of interruption or interference; and it further held that when the spotting service at an industry requires a service in excess of that required in making a simple placement or the equivalent of team-track spotting, such service is in excess of that required of a common carrier under its line-haul rates. At no time since November 1, 1937, as to any shipment received at or moving from aforesaid plant of petitioner has there been any interruption or interference to prevent continuous performance of service to and from points of loading and unloading at tracks at said plant because of any action or disability of the industry or its plant; the service at all times has been performed by the carriers according to their own methods and at their convenience; and the cost to the plaintiffs, as well as the Pennsylvania and Baltimore & Ohio Railroads, of performing said service has been less than the cost to them of performing simple placement of cars on industrial side tracks at the City of Decatur and elsewhere, and less than their cost of performing terminal services on shipments
144 originating at or delivered on public team tracks in Decatur and elsewhere.

That subsequent to said decision, the Commission issued its so-called 55th Supplemental Report in said proceeding, Ex Parte No. 104, Part II, under date of May 22, 1936, 215 I. C. C. 656, and by order required the respondent carriers to cease and desist from paying an allowance to petitioner. The respondents and petitioner complied with said order in due course, the aforesaid allowance was cancelled, and petitioner at all times has endeavored to conform to and abide by the principles established by the Commission in its aforesaid reports.

XII

That in and by aforesaid report of May 14, 1935, 209 I. C. C. 11, all of the Class I railroads of the United States, respondents thereto, including the plaintiffs herein, were notified and required to follow and apply the principles therein set forth and to conform their practices thereto at all plants served by them. Complainant is informed and believes that the five railroads serving Decatur and the carriers generally, respondents to said proceeding, have examined into the practices at the various plants served by them and have made no substantial changes in any of

their practices at any of the plants save for the discontinuance of allowances paid under Section 15 of the Act to various particular industrial companies to whom such allowances had been paid. If there have been existing violations of the principles established by the Commission in such proceeding, the Commission has taken no steps during the period of more than seven years, which have elapsed since that order, to correct such impropriety or examine into such conditions at particular plants other than a
145 limited number of particular plants which have been receiving allowances.

XIII

That the plaintiffs have recognized and admitted the injustice and illegality of the charge provided in the schedules described in Section VI hereof and by new schedules published to become effective December 15, 1939, the plaintiff railroads endeavored and proposed to cancel the aforesaid $2.50 charge. Notwithstanding that such cancellation would have satisfied, as to traffic moving thereafter, the informal complaint which had been made by petitioner to the Commission under dates of November 20 and 27, 1939, the Commission by Division 2 suspended the cancellation of said charge and entered into an inquiry concerning the lawfulness and propriety of the suspended schedules. Notwithstanding that the statute required expedited proceedings and that the suspension period provided in the statute was only ten months, the Commission held no hearing for seven months and did not decide the matter for nearly two years, or until the 6th day of May, 1941, when it entered report and order, 245 I. C. C. 383, more particularly described and referred to in the complaint of plaintiffs herein.

XIV

That besides the business of petitioner, particularly described and referred to in Sections IV and V hereof, petitioner owns and operates in or adjacent to its aforesaid plant at Decatur, Illinois, grain elevators of large size and capacity, in which it conducts a merchant elevator business, receiving, storing, treating and handling grain, moved inbound both in state and inter-
146 state commerce, and moved outbound in both state and interstate commerce, for account of the divers owners of said grain. Said elevators are served by four parallel tracks well and suitably laid out for the handling of carloads containing shipments of grain and equipped with car pullers whereby complainant spots the cars at its own expense and at its own conven-

ience under the chutes and apparatus for loading and unloading, the service by the carriers consisting of placing strings of inbound cars on the tracks approaching said elevator and removing loaded and empty cars from said tracks in the simplest and most economical manner.

That in said business of operating merchant grain elevator, petitioner competes with numerous companies, firms and persons engaged in operating grain elevators at numerous local stations and important terminal marketing points served by the plaintiffs, as well as the Pennsylvania and Baltimore & Ohio Railroads, including the well known centers of Chicago, St. Louis, Peoria, Omaha, Kansas City, Indianapolis, Toledo, and numerous other points served by said carriers.

That among the numerous concerns operating grain elevators as aforesaid, is the Decatur Milling Company, with elevator and grain storage buildings in the City of Decatur, reached by the rails of plaintiff, Wabash Railroad Company.

That under the laws of the State of Illinois and of the United States, grain moving by railroad has to be inspected at market points and destinations, such as Decatur, and such inspection, by common custom and practice and according to law, is made at points designated by the railroads on tracks in the railroad yards.

That in accordances with such laws, customs and usages,
147 all carload shipments of grain moving into the City of Decatur, consigned to any receivers of grain or elevator at said point move in trains indiscriminately to the railroad yards, and after inspection in said yards the grain is moved on by the carrier to the elevator or unloading dock of the consignee. This subsequent movement is performed in the City of Decatur for and to all elevators, plants and unloading points free of any charge other than the established freight rate, excepting if it moves to the aforesaid elevators of petitioner, in which case the charge of $2.50 has been imposed, contrary to law and to the obligations of the carriers in the premises.

XV

That adjacent to petitioner's plant in the City of Decatur is the manufacturing plant of the Mississippi Valley Structural Steel Company, which receives and ships carloads of freight of various description moving in and over the lines of plaintiffs. As to said industry, carload shipments have been at all times past, and are now delivered and placed by the railroads serving Decatur, at the points of loading and unloading designated by said industrial company in its said plant for the compensation afforded by the freight rates and without exaction of any other charge. That

daily shipments consigned or made by said plant in large numbers have moved through the plant of petitioner, passing by the adjacent points of loading and unloading in petitioner's plant and moved by the same engines of plaintiffs which move the cars to and from petitioner's plant; and no charges have been exacted for the placement service performed for the Mississippi Valley Structural Steel Company.

148 XVI

That petitioner has sought again and again to obtain action by the Commission in the way of relief from the unjust discrimination which petitioner is suffering, and in each of its several petitions for rehearing filed with the Commission and which are referred to in Section VI of the complaint of plaintiffs Wabash Railroad Company, et al., herein, petitioner has called attention to the matters of discrimination which it has been suffering.

That subsequent to the taking of the effect of the original order of the Commission, Division 3, the petitioner filed under date of May 29, 1937, its petition for reconsideration or rehearing. A copy of said petition is attached hereto and marked "Appendix A" and made a part hereof, attention being particularly invited to the averments of Section III. The Commission denied said petition by order dated June 8, 1937.

That under date of October 27, 1937, petitioner filed with the Commission its petition for suspension of the schedule referred to in Sections VI and X of this intervening petition, a copy of said petition being attached hereto and marked "Appendix B" and made a part hereof. Attention is called to particular averments of undue prejudice and unjust discrimination made therein. The Commission declined to suspend the schedule.

That under date of March 16, 1938, petitioner filed its petition for rehearing and reconsideration, which is referred to in Section VI of the complaint of plaintiffs Wabash Railroad Company, et al., herein; and a copy of said petition of March 16, 1938, is attached hereto and marked "Appendix C" and made a part hereof, attention being called to the specific averments of Section VI thereof. The Commission did not grant the prayer of

149 said petition and by order entered April 8, 1938, only reopened the proceeding for further hearing limited to the presentation of evidence of changes in physical conditions at petitioner's plant.

That under date of June 17, 1941, petitioner filed its motion to vacate the order entered May 6, 1941, and its petition for reconsideration, of which a true copy is attached to the bill of complaints of plaintiffs Wabash Railroad Company, et al., marked

"Appendix D" and made a part thereof. The said motion and petition were denied by the Commission on July 31, 1941.

That in and by the aforesaid petitions, the Commission's attention has been repeatedly called to the aforesaid matters of discrimination, over a period of more than six years, without any action thereon by the Commission, notwithstanding its powers and duties under the Interstate Commerce Act.

PRAYER

Wherefore, your petitioner prays that leave be granted it to intervene in and be made an intervening party plaintiff in the above-entitled cause, and that it may have such other and further relief in the premises as may be meet.

Dated at Decatur, Illinois, August 20, 1942.

C. C. LE FORGEE,
JOHN S. BURCHMORE,
Attorneys for Petitioner.

LE FORGEE, SAMUELS & MILLER,
Citizens Bank Building, Decatur, Ill.
WALTER, BURCHMORE & BELNAP,
2106 Field Building, Chicago, Ill.

150 [*Duly sworn to by T. C. Burwell, jurat omitted in printing.*]

151 *Appendix A to intervening petition*

Before the Interstate Commerce Commission

Ex Parte No. 104

PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES

PART II—TERMINAL SERVICES OF CLASS I CARRIERS

PETITION FOR RECONSIDERATION AND REHEARING

Now comes A. E. Staley Manufacturing Company, petitioner, and respectfully petitions the Commission to reopen the above entitled proceeding as regards the matters involved in the 55th supplemental report therein, 215 I. C. C. 656, and to grant petitioner a hearing, in the light of the present and changed conditions, to the end that such final order shall be entered in this proceeding

affecting petitioner and its traffic as may be required by the evidence and by the provisions of the Interstate Commerce Act.

In that behalf, petitioner respectfully states:

I

Petitioner is now paying (under protest) on all interstate carload shipments moving to and from its plant at Decatur, Illinois, a terminal charge of $2.27 per loaded car, in addition to the established freight charges, on all cars placed at unloading points or taken from loading points in said plant.

Petitioner is informed and believes that it is the only
152 industrial company in the country, and certainly its plant is the only one receiving corn and soybeans and shipping the various products thereof, at which any such terminal charge is being exacted. Cars are placed for loading and unloading on tracks (a) at all other corn products and soybean producing plants with which petitioner competes and (b) at all other industries in the City of Decatur, Illinois, without any terminal charge over and above the established freight rates.

If such charges are to be imposed in the future for like terminal services, performed under like circumstances for competitors of petitioner, or at industrial plants generally, it seems manifestly unfair that petitioner alone should be subjected to such charges during the months, or years, which may pass before such system of charges is inaugurated generally.

II

In the aforesaid 55th supplemental report, the Commission found and concluded, among other things:

"that the interchange tracks at the plant of the Staley Company described of record are reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent carriers are compensated in their line-haul rates begins and ends at said points".

Notwithstanding that conclusion, the railroads are exacting the $2.27 terminal charge per car in addition to the freight rates on cars into which the petitioner is loading the freight or from which it is unloading the freight on said interchange tracks. Defendants' special tariff of terminal charges on its face purports to provide such charge on such cars.

III

Conditions have entirely changed at petitioner's plant. The evidence on which the Commission's 55th supplemental report and

the order of May 22, 1936, thereto attached were entered, was taken by the Commission at hearings held in May, 1932,
153 or nearly six years ago. The present conditions are generally and materially different than the conditions existing in 1932, and have substantially changed since the date of the Commission's order.

At the time of the hearing and on the date of the Commission's order of May 22, 1936, petitioner was receiving from each of the five railroads reaching Decatur, Illinois (Baltimore and Ohio, Illinois Central, Illinois Terminal, Pennsylvania, and Wabash), a published allowance of actual cost but not to exceed $1.65 or $1.89 per car; and for that allowance petitioner furnished the locomotives and crews and moved the cars between the so-called interchange tracks and the various points on standard gauge tracks within its plant at which the shipments were loaded into or unloaded from the cars. The railroads with their locomotives and crews, in a manner described in the Commission's report, took the cars to and from the said interchange tracks.

Beginning on the 7th day of July, 1936, a new arrangement was voluntarily entered into by the five railroads, to which petitioner assented, whereby petitioner relinquished the allowance theretofore paid and the work of switching and spotting of cars was thereafter performed by the Wabash Railway on its own behalf and on behalf of the other four railroads. Subsequently, the Baltimore & Ohio, Illinois Central, Illinois Terminal, and Pennsylvania railroads ceased the practice, described in the report, by which in-bound and out-bound cars moving via those lines were taken to and from the interchange tracks at the Staley plant: At the present and for some months past, the Wabash Railway has been moving all cars containing carload shipments for all railroads to and from petitioner's plant, under a reciprocal switching plan, and the switching and placement of all cars has been and is performed by the Wabash Railway.

The Wabash also performs various so-called intraplant switching services for petitioner, under established charges for such services which petitioner is paying in substantial sums monthly.

154 IV

Beyond the substantial change in switching practice and the method of performing terminal services on shipments to and from petitioner's plant, as described in section III, supra, petitioner further states that since the date of the Commission's aforesaid order, a soybean oil mill and refinery have been completed and placed in operation at petitioner's plant, which are served by new tracks not in existence at the time of the Commission's order;

and service over these tracks involves no movement to, from, or via the so-called interchange tracks.

V

The premises considered, petitioner submits that the present practices of the carriers at its plant are entirely in conformity with the terms and conditions of the original report of the Commission in this proceeding, entered May 14, 1935, 209 I. C. C. 11.

In the performance of the spotting services, there is not and could not possibly be any interference with, or conditions causing interruption of, the work of the Wabash locomotives in performing terminal services on carload shipments moving via each and all of the railroads entering Decatur; and there is nothing in the layout of the tracks or in the industrial operations of the petitioner which causes or could cause any interruption or interference with the spotting work of the railroad locomotives.

Petitioner is not receiving a continuous or stand-by service, or a service performed "at the beck and call of the industry" or anything more or less than the ordinary and usual placement and delivery or initial switching performed by the railroads for industrial plants generally.

VI

The service now rendered by the railroads and which they have been performing since the relinquishment of the allowance
155 by petitioner, is the same service which the same railroads and other railroads furnish under their established freight rates for all of the competitors of petitioner in the manufacturing of corn products and in allied lines of business.

For illustration, and as shown by the record in this proceeding, all of the spotting services within the plant of the Corn Products Refining Company at Argo in the Chicago switching district, are performed for account of all of the railroads (including the Baltimore and Ohio, Illinois Central, Pennsylvania and Wabash) by the Indiana Harbor Belt Railroad Company under the established Chicago rates and have been so performed for many years past.

At the plant of the American Maize Products Company at Roby, Indiana, in the Chicago switching district, all of the spotting services are and for many years have been performed by the Pennsylvania Railroad, under the established freight rates.

At Cedar Rapids, Iowa, the corn products refining plant of Penick & Ford, Ltd., Inc., is switched by the Milwaukee Road for the account of all Cedar Rapids lines, including the Illinois

Central, and for many years past, and now, the spotting services are performed under the established freight rates.

At Pekin, Illinois, within the plant of the Corn Products Refining Company spotting services for account of all lines, including Illinois Central, Pennsylvania and Illinois Terminal, are performed by the Peoria & Pekin Union Railway under the established Pekin-Peoria freight rates.

At Granite City, Illinois, the Terminal Railroad Association performs the spotting services within the plant of the Union Starch & Refining Company under the St. Louis freight rates on behalf of all of the railroads, including all of the five railroads who serve petitioner at Decatur.

At Clinton, Iowa, the Chicago and North Western Railway performs the spotting services on behalf of all of the lines entering Clinton at the plant of the Clinton Company, manufacturers of corn products, etc.

At all of the aforesaid plants, the circumstances and con-
156 ditions are substantially the same as at petitioner's plant; and the services performed by the railroads under the freight rates include the placement of the cars at the points of loading or unloading throughout all of said plants, conveniently located for such purpose and as the plants desire.

VII

By the exaction of the aforesaid special terminal charge of $2.27 per car in addition to the established freight charges, each of the five railroads serving Decatur subjects petitioner to excessive, unjust and unreasonable charges on all of its interstate carload shipments; and in that behalf, petitioner avers:

(a) That on carload shipments which are actually loaded and unloaded on the identical tracks particularly described in the Commission's report as interchange tracks, the carriers are not performing their transportation duty even under the most extreme interpretation of the Commission's reports, and by the exaction of said charge violate Section 1 of the Act.

(b) The "simple service" now performed at plaintiff's plant on interstate shipments is a like service, to that now and heretofore performed under similar circumstances at all other industries having private sidetracks in the City of Decatur; and the established freight rates to and from Decatur were made by the carriers and in many instances prescribed by the Commission as maximum to include such terminal service.

(c) A charge which is not now and never has been made at any other industry in Decatur, or at other cities at which the same general system of freight rates is now in force, is mani-

festly unreasonable; and the aforesaid charge which the carriers are now exacting of plaintiff for this service was expressly condemned by the Commission as in principle unreasonable and otherwise unlawful in Car Spotting Charges, 34 I. C. C. 609.

VIII

The present practice of the carriers, and their present
157 imposition of the aforesaid terminal charge on petitioner's traffic, subjects petitioner and its aforesaid traffic to undue prejudice and unjust discrimination, in violation of Section 3 of the Act and is producing and resulting in undue preference to the various competitors of petitioner referred to in Section VI of this petition and their aforesaid traffic, in violation of Section 3 of the Act.

IX

The refusal of the carriers to transport carload shipments to and from the loading and unloading points in petitioner's plant, by uninterrupted continuous service and movement (excepting upon the exaction of said terminal charge of $2.27 per car in addition to the established freight charges), constitutes a violation of Section 2 of the Interstate Commerce Act. By such refusal and exaction, the defendants are subjecting petitioner to unequal treatment and denying petitioner the performance of transportation services at the same rates and on terms and conditions as favorable as those given by said defendants for like traffic under similar condition to all other carload shippers and receivers of freight at Decatur, Illinois, and to the various competitors of petitioner as hereinabove described and referred to, in violation of Section 2 of the Act.

X

By exacting the aforesaid unprecedented charge of $2.27 per car on petitioner's shipments, the carriers are charging and receiving higher freight charges in the aggregate for the transportation of shipments for longer distances than for shorter distances over the same routes in the same direction, without authority therefor from the Commission, and thereby they violate Section 4 of the Act.

Numerous illustrations could be given: For example, the export rate on starch from Peoria to Gulf ports is 22.5 cents per 100 pounds and applies through Decatur, a direct route. Under this rate, cars of starch are moved from points of loading in Corn

Products Refining Company plant at Peoria with no
158 charges assessed or proposed for such terminal service; and under the proposed tariff, petitioner will pay $2.27 per car more for a carload of starch moved from its plant at Decatur to New Orleans than is paid on like movements from Peoria to New Orleans, in violation of the long-and-short-haul clause.

Cars moving to or from the Mississippi Valley Structural Steel Company at Decatur, move over the tracks of the petitioner's industry and, no spotting charge having been published thereon, will pay less total freight charges than if delivered to petitioner, in violation of the long-and-short-haul provision.

XI

The tariff schedule under which the carriers are exacting the aforesaid charge of $2.27 per car, which petitioner is paying under protest, is described as Illinois Freight Association Freight Tariff No. 79, R. A. Sperry, Agent, I. C. C. No. 376, and became effective November 15, 1937. The said schedule, petitioner avers, is unlawful in form and in substance and should be considered void because (among other reasons), it is not lawful under Section 6 to publish a charge specifically restricted to apply only on the traffic of a named shipper. If, on through shipments loaded into railroad cars standing on tracks of petitioner at Decatur and which move through without interruption to an interstate destination, it should be deemed lawful to publish a special charge such as provided in the protested schedule not applicable on shipments from any other loading point in Decatur, it would seem to follow that the carriers could lawfully publish a special through rate on starch, for example, from the Staley loading platform at Decatur to New York not applicable from any other loading point in Decatur. The protested schedule, although not entirely clear and somewhat indefinite, appears to provide a charge on the Staley traffic applicable on through shipments moving from the loading platforms without stoppage or interruption through to interstate destinations.

Moreover, the aforesaid schedule is in violation of Section 6 in that it is not clear, definite and unambiguous. It purports
159 to provide a charge as to inbound shipments, for services to points of unloading without specifying from what point or points such service begins; and as to outbound shipments it purports to provide a charge for service from the points of loading without specifying to what point the charge covers. The regular terminal tariffs of each of the railroads provides for free movements to and from all points of loading and unloading

within the Decatur switching district. Therefore, the tariff is in violation of the Commission's regulations and of Section 6 of the Act.

WHEREFORE, petitioner prays that the Commission will reopen the above entitled proceeding and grant a rehearing therein and reconsider the same, to the end that such order or orders may be entered as may be appropriate and necessary so that petitioner may be relieved of the unjust burden, undue prejudice and unjust discrimination at present suffered by it; that the defendants may be required to reform their practices with regard to the movement of interstate carload shipments to and from petitioner's industrial plant; that the present tariff of special terminal charges may be required to be cancelled as in violation of the Act; and for such other relief as may be found appropriate.

Respectfully submitted.

A. E. STALEY MANUFACTURING COMPANY,
Petitioner,

By LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
Its Attorneys.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing petition on counsel for each of the five railroad companies named therein, this 16th day of March, 1938.

JOHN S. BURCHMORE,
Of Counsel.

160 *Appendix B to intervening petition.*

SUSPENSION PETITION

OCTOBER 27, 1937.

To the INTERSTATE COMMERCE COMMISSION:

Now comes your petitioner, A. E. Staley Manufacturing Company, and respectfully requests the suspension of Illinois Freight Association Freight Tariff No. 79, R. A. Sperry, Agent, I. C. C. No. 376, issued October 9, 1937, to become effective November 15, 1937, naming a new and novel terminal charge applicable solely at the plant of petitioner in Decatur, Illinois, and purporting to be "published pursuant to Interstate Commerce Commission Ex Parte 104, Part 2, 55th Supplemental Report".

In that behalf, petitioner states:

I

Your petitioner, A. E. Staley Manufacturing Company, a corporation, is engaged in the manufacture, sale and shipment of corn products, soybean products and various other articles, with factory at Decatur, Illinois, and receives and ships a large volume of carload freight moving from and to points in other states, in interstate commerce, over various railroads subject to the jurisdiction of this Commission.

II

The carriers whose lines serve Decatur, Illinois, and which reach the plant of petitioner, are commonly known as Baltimore & Ohio, Illinois Central, Illinois Terminal, Pennsylvania and Wabash, hereinafter referred to as respondents.

The protested schedule is an entirely new issue filed for
161 account of said five respondents and names "Terminal charges to and from the A. E. Staley Manufacturing Company at Decatur, Illinois." The following is the entire substance of the tariff:

TERMINAL CHARGES [1]

A charge of $2.27 per car (see Note 1) in addition to the line-haul charges will be made for each movement over industry tracks to or from the points of loading (see Note 2) or unloading (see Note 2) within the plant of the A. E. Staley Manufacturing Company of cars containing shipments originating or destined beyond Decatur, Illinois.

Note 1.—Charge includes handling of empty cars subsequent to or preceding a loaded movement.

Note 2.—Point of loading means location at which car is finally loaded for road-haul movement. Point of unloading means location at which car is first placed for unloading subsequent to road-haul movement. The term points of loading and unloading also include storage tracks.

III

The petitioner protests and seeks the suspension of the aforesaid schedule and an investigation as to the reasonableness and propriety of the charge therein provided, on the following grounds:

First. It would be unjust and unreasonable to apply said charge

[1] Increase.

in addition to the charges assessable at the established freight rates on movements to and from petitioner's plant, in violation of section 1. A charge which is not now and never has been made at any other industry is manifestly unreasonable; and the charge for this service, when proposed by the carriers many years ago, was condemned by the Commission as unreasonable and otherwise unlawful, in Car Spotting Charges, 34 I. C. C. 609.

162 Second. The application of said charge will create undue prejudice and unjust discrimination against petitioner and its traffic and unjust preference of numerous competitors of petitioner and in favor of other shippers and receivers of carload traffic at Decatur, Illinois, moving under the same freight rates, in violation of sections 2 and 3.

For instance, the rates between Decatur, Illinois, and Chicago, Illinois, over interstate routes and between Decatur, Illinois and Cedar Rapids, Iowa, are the same in both directions; and traffic moves in both directions, to and from petitioner's plant from and to both Chicago and Cedar Rapids. On such movements, cars will be placed at loading and unloading points on the Chicago end and the Cedar Rapids end of the transportation for the compensation afforded by the freight rates, without plus charges, and such loading and unloading points are situated on networks of tracks serving industries at those points. But if the proposed tariff becomes effective, presumably the carriers will charge petitioner $2.27 per car in addition to the same established Decatur-Chicago and Decatur-Cedar Rapids freight rates for placing the cars at loading or unloading points in petitioner's industry, even though placement is performed in one uninterrupted movement in strict conformity with the Commission's ruling in Ex Parte 104, Part 2.

Furthermore, the proposed schedule proposes no charge at other industries in Decatur, who will continue to receive "free" placement on their plant tracks.

Third. The said schedule will produce higher charges in the aggregate for the transportation of shipments for longer distances than for shorter distances over the same routes in the same direction, without permission therefor from the Commission, in violation of section 4 of the Act.

Numerous illustrations could be given: For example, the export rate on starch from Peoria to Gulf ports is 22.5 cents per 100 pounds and applies through Decatur, a direct route. Under this rate, cars of starch are moved from points of loading in Corn Products Refining Company plant at Peoria with no charges assessed or proposed for such terminal service; and

163 under the proposed tariff, petitioner will pay $2.27 per car more for a carload of starch moved from its plant at

Decatur to New Orleans than is paid on like movements from Peoria to New Orleans, in violation of the long-and-short-haul clause.

Cars moving to or from the Mississippi Valley Structural Steel Company at Decatur, move over the tracks of the petitioner's industry and, no spotting charge having been published thereon, will pay less total freight charges than if delivered to petitioner, in violation of the long-and-short-haul provision.

Fourth. The charge will result in violation of various outstanding orders of the Commission fixing maximum rates for transportation of carload traffic to and from Decatur, Illinois. For illustration, the rates on vegetable oils from Decatur to eastern territory are on the full maximum basis fixed by the Commission in Cottonseed Products Investigation, 188 I. C. C. 605, and the rates therein prescribed were the maximum for the through transportation from point of origin to destination without any provision for the addition of terminal charges for placement at origin or destination.

Fifth Recognizing that by reason of wage increases, costs of materials and supplies and other factors, the railroads are undoubtedly in need of augmented revenues, petitioner submits that the effect of this charge, if applied on carload traffic to and from its plant, will reduce the aggregate revenues of the carriers on petitioner's traffic, because petitioner will be forced to rearrange its business and use other modes of conveyance; and petitioner is persuaded that the imposition of like charges at the plants of competitors of petitioner would have like effect.

Innumerable illustrations could be given: For example, petitioner uses large quantities of bags moving from St. Louis to Decatur at a rate of 13 cents, which has always included placement services at petitioner's unloading points. The carriers advanced this rate to 14.5 cents but immediately cancelled the increase upon learning of the fact that an established responsible trucking line
maintains a 13-cent rate from St. Louis to Decatur applying
164 for deliveries at any store, warehouse or platform in Decatur.[2] Again, the maximum rate on vegetable oils from Decatur to Chicago, in harmony with the Commission's prescribed rate scales, would be 21 cents but the carriers have maintained a tariff rate of 15.5 cents per 100 pounds. Petitioner is able to procure transportation of vegetable oil in tank trucks from Decatur to any deliveries in the City of Chicago at less than 15 cents per 100 pounds and the imposition of the proposed $2.27 charge will force petitioner to use the trucks.

[2] By the way, the respondent carriers under their l. c. l. rates deliver freight to stores, warehouses, and platforms throughout Decatur by truck, without plus charges.

Moreover, truck traffic has grown to such an extent that now an enormous volume of cattle, hogs, sheep, grain and various other farm products are being conveyed in privately owned trucks with trailers attached, to Chicago, St. Louis, Indianapolis, and various other markets. The level of freight rates, together with the possibility of advantage to the country dealers and elevator men in securing higher profits when freight rates are not paid, as well as advantage to the farmer or grower of corn and soybeans in transporting such products direct to the factories and elevators of large users by trucks rather than by the old method of loading into cars at country stations must be recognized as a serious factor. If the transportation service under the freight rates is to be cut off at the entrance to a plant like petitioner's, and additional terminal charges are imposed for moving the cars to and from the elevator or loading and unloading locations, it will greatly accentuate the diversion of these products from the railroad to private truck movement over the highways.

Sixth. Instead of being justifiable as published "pursuant to Interstate Commerce Commission Ex Parte 104, Part 2, 55th Supplemental Report," (215 I. C. C. 656) the charge, on the contrary, is in violation of the principles and terms of the Commission's main decision in said Ex Parte 104, Part 2, 209 I. C. C. 11, which is made a part of the 55th Supplemental Report, by reference.

That report contemplates that where the terminal service
165 performed in originating or delivering carload shipments at an industry having a system of plant tracks involves interruptions or interference, it shall not be considered as transportation included within the freight rates and where the service does not exceed the equivalent of team track service and does not involve interruptions or interference, the placement is included within the established freight rates. As to the vast majority of shipments moving in and out of petitioner's plant, there is not and would not be any interruption or interference; and there is no occasion for such shipments being moved by the carriers to or from the so-called interchange tracks, excepting as that may make for their convenience and for economy to them. Petitioner does not operate any locomotives and such intraplant switching as is required in the conduct of its business is performed by the carriers for the industry and the conventional tariff charges therefor are assessed and paid. These movements are not of a character that involves any interference with the performance of the so-called spotting services by the carriers.

Giving full faith and credit to all that is said in the Commission's report, there is no basis therein for establishing the charge proposed in the protested schedule.

Seventh. If the publication of said charge is said to be required by the Commission's aforesaid report and order, it must be on the theory that the "free" performance of such spotting services would be unjustly preferential to petitioner and unduly prejudicial to other shippers of the same commodities transported and delivered under similar circumstances and conditions. There is no such unjust preference in fact, for no competitor of petitioner is refused a like service for the compensation afforded by the freight rates; and petitioner has been informed by all of its principal competitors that so far from supporting the establishment of this charge at petitioner's plant, said competitors regard the proposed tariff as creating an unprecedented and unwarranted burden on petitioner and its traffic and an unjustified restriction of the carrier's service under the established freight rates.

Eighth. The aforesaid schedule violates section 6 in that it is not clear, definite and unambiguous; it provides a charge which, if for a service of transportation, is unlawful because
166 directed against only one shipper and his traffic; and if the charge is not for a service of interstate transportation, the schedule has no place in the tariff schedules filed with this Commission.

Petitioner believes the placement services now being performed by respondent carriers in its plant are services of transportation, properly included in the freight rates.

Ninth. The aforesaid schedule is unlawful in form and substance, should be considered void, and accordingly should be suspended.[3] This, because it is not lawful to publish a charge specifically restricted to apply on the traffic of a named shipper. If, on through shipments loaded into railroad cars standing on tracks of petitioner at Decatur and which move through without interruption to an interstate destination, it is lawful to publish a special charge such as provided in the protested schedule not applicable on shipments from any other loading point in Decatur, it would seem to follow that the carriers could lawfully publish a special through rate on starch, for example, from the Staley loading platform at Decatur to New York not applicable from any other loading point in Decatur. The protested schedule, although not entirely clear and somewhat indefinite, appears to provide a charge on the Staley traffic applicable on through shipments moving from the loading platforms without stoppage or interruption through to interstate destinations.

[3] Suspension seems to be the Commission's only action, since the Commission's authority to reject a schedule is limited under paragraph (9) of section 6 to a schedule which fails to give statutory notice.

The foregoing points are further developed in subsequent paragraphs of this petition.

MEMORANDUM IN SUPPORT OF SUSPENSION

The grounds on which petitioner seeks suspension are broadly and perhaps sufficiently stated in paragraph IH of this petition. Many details could be given of facts supporting the general statements made as to the effect of the charge and the violations of sections 1, 2, 3, 4 and 6 which it would produce. They would be merely cumulative.

167 There are, however, in the history and present status of this matter, certain facts and circumstances which it seems desirable to set forth for the information of the Suspension Board and the members of the Commission to whom this petition will be submitted for action.

When the Commission announced its main decision and supplemental reports in Ex Parte 104, Part 2, with only Commissioner Mahaffie dissenting, we presume it was intended to correct an evil and stop improper practices and not in any sense to have vindictive effect in selecting out any shipper for punishment and future penalties. Especially not a shipper whose affairs had been conducted in supposed compliance with the Commission's views in Car Spotting Charges, 34 I. C. C. 609, and who had the advice of counsel that the allowance was lawful under section 20 and under more than fifty decisions of this Commission approving spotting allowances.

PETITIONER'S EFFORTS TO SHOW ITS COMPLIANCE WITH COMMISSION'S DECISION

Upon issuance of the Commission's supplemental report condemning this particular allowance, 215 I. C. C. 656, in May, 1936, petitioner immediately notified the carriers that it relinquished the allowance and the carriers were requested to perform the spotting service, strictly within the circumstances and under the limitations defined by the Commission in its main report, 209 I. C. C. 11, which was made a part of the order attached to the 55th supplemental report by cross reference.

The carriers thereupon took over the spotting work at petitioner's plant and petitioner laid up its engine; and since July 7, 1936, the spotting service has been performed entirely at the convenience of the carriers, without interruption or interference, and without any necessity of moving the cars in the first instance to or from the so-called interchange tracks. Most of the cars

have not stopped at the interchange tracks, since the allowance was cancelled.

168 Petitioner filed with the Commission two petitions for rehearing, not for the purpose of re-establishing the allowance, but to avoid an interpretation of the Commission's order as requiring the creation of a spotting charge of the kind herein protested.

In the second petition for rehearing, dated May 29, 1937, petitioner alleged changes of conditions and the propriety of the present practices. Before said petition was acted upon by the Commission, it is the information of petitioner that the Commission caused a private examination to be made by a field employee whose report, to which petitioner is denied access, was accepted as sufficient basis for rejecting petitioner's solemn averments of fact and denial of the petition; and (contrary to the Supreme Court's ruling in 226 U. S. 19), thereby petitioner was denied the fair hearing which the Commission invariably has accorded shippers and carriers where questions of fact are raised.

IS THE COMMISSION SEEKING TO ESTABLISH A GENERAL SCHEME OF SPOTTING CHARGES?

Petitioner has been advised from time to time that the particular purpose of the Commission in instituting Ex Parte 104, Part 2, and issuing the report therein, was primarily to require the carriers to cease and desist from paying allowances that might be unjust or otherwise unlawful to industrial companies under section 15 for so-called spotting services; and it has been publicly denied that the Commission had any purpose of inducing the carriers to establish a scheme of terminal charges for spotting services, such as involved in Car Spotting Charges, 1915, 34 I. C. C. 609. The carriers by the testimony of their numerous witnesses in Ex Parte 104, Part 2, definitely opposed the adoption and imposition of a plan of spotting charges.

If it was the purpose of the Commission and of its original and supplemental reports and orders in said proceeding simply to cut off any allowances found to be preferential or otherwise improper, such purpose has been completely fulfilled as to the petitioner's plant, for the allowance is permanently cancelled.

169 Petitioner has paid and will continue paying the carriers, according to their established schedules now in effect, substantial amounts monthly for intraplant movements and switching services not coming within the terms of the said original report and not properly included within the freight rates.

On the other hand, if, contrary to petitioner's information, it has been the purpose or intention to induce the railroads to pub-

lish a plan of spotting charges covering placement services generally at industries having systems of plant track (however such industries are to be classified or described), or for placement services on private sidetracks as distinguished from public team tracks, petitioner suggests that it is manifestly unfair and would be unconscionable of the railroads to single out your petitioner for particular application of such spotting charge long in advance of any preparations for imposing such charge on its numerous competitors and at industries generally where such charge would be appropriate, if proper at petitioner's plant.

The Commission's reputation for fairness and its unvaried record of requiring fair play and equal treatment by the railroads is invoked by petitioner in behalf of suspending the application of this spotting charge at petitioner's plant until such time as the carriers may propose a like charge at industries generally. In support of this appeal, petitioner states that the officials of the Decatur lines, the traffic managers of petitioner's principal competitors and the representatives of all other industries with whom petitioner has come in contact have expressed to petitioner the unqualified recognition that to apply a spotting charge on the shipments of petitioner at this time would be to select petitioner as a special victim and impose on petitioner's traffic an extraordinary burden, which petitioner urges would be clearly violative of sections 2 and 3 of the Act.

THE COMMISSION'S POSITION IN PENDING COURT CASES

Subsequent to the issuance of the Commission's 55th supplemental report, the Decatur lines informed petitioner that in obedience to their interpretation of the order attached to said report, they would be compelled to cease performing spotting services at petitioner's plant. Thereupon, petitioner filed
170 in the United States District Court at Springfield, its bill of mandamus directed against the five Decatur lines and containing only the following prayer:

"Wherefore, petitioner respectfully prays that a writ of peremptory mandamus may be issued directing, commanding, and ordering the defendants and each of them to transport in interstate commerce the shipments tendered by petitioner to them from points of loading in its aforesaid plant at Decatur, Illinois, and to deliver to petitioner at reasonable, convenient, and accessible points of unloading in its aforesaid plant at Decatur inbound shipments moving over their aforesaid tracks at the established freight rates and charges provided in their published tariffs on file with the Interstate Commerce Commission, and on terms or

conditions as favorable as those given by said defendants for like traffic under similar conditions to all other shippers.

"That petitioner may have such other further order as justice may require."

The matter came on for preliminary hearing on June 12, 1937, at Springfield, and in open court counsel for the several defendant carriers stated first, that the railroads would not discontinue spotting services at the petitioner's plant but, on the contrary, promised that they would continue to place the cars, both loaded and empty, at points of loading and unloading and remove the same; second, that the carriers had tariffs on file with the Commission providing charges which would be applicable for movements between the so-called interchange tracks and the points of loading and unloading at petitioner's industry and that they did not require any further tariff authority for such charges (which statement petitioner's counsel challenged); and third, that their course in refusing to include such services within the established freight rates was due entirely to the compulsion of the order of the Interstate Commerce Commission.

Thereafter, counsel for the Interstate Commerce Commission forwarded to the court, by mail, a petition of intervention in said mandamus proceeding and in said petition described the order attached to the 55th supplemental report in these words:

171. "Whereupon the Commission, under date of May 22, 1936, issued its order requiring the Wabash Railway Company, the Baltimore & Ohio Railroad Company, the Pennsylvania Railroad Company, the Illinois Central Railroad Company, and the Illinois Terminal Company; all made defendants in the above-styled case, to cease and desist from paying an allowance to the plaintiff company for the performance by the latter of switching between said interchange tracks and points of loading and unloading within the plaintiff plant and that of the Mississippi Valley Structural Steel Company. That said order became effective June 15, 1937."

The proposed intervening petition further stated in substance that the Commission had jurisdiction to determine the whole question of preference or discrimination in favor of or against petitioner and invoked the opportunity to exercise such jurisdiction in the following words:

"The plaintiff in the above-styled suit seeks to have the Court make a determination that the alleged failure or refusal of the defendant carriers to move cars between plaintiff's interchange tracks and points of loading or unloading within its plant would unduly and unlawfully prejudice it and prefer its competitors,

whereas the Interstate Commerce Act gives to this Commission the exclusive power to make such determination."

Petitioner has not consented to the Commission's proposed intervention in said proceeding and there has been no ruling of the court thereon.

Petitioner respectfully urges the Commission to exercise its jurisdiction in this matter and in common fairness to grant the hearing which petitioner repeatedly has requested the Commission to accord it on the question of the propriety of the present practices at its plant and the charges to be applicable for any terminal services there rendered by the carriers. Petitioner has twice petitioned the Commission to grant a hearing, in view of the change of circumstances whereby it has relinquished an allowance and the carriers are now performing only services
172 believed by petitioner to come within the rule of the original report; petitioner's requests to that effect are contained in its formal petitions of June 16, 1936 and May 27, 1937, both of which were denied summarily; and it now repeats such request.

If the Commission has exclusive jurisdiction over this matter, as represented by its counsel to the court at Springfield, we cannot believe the Commission will refuse to exercise such jurisdiction or refuse to hold any inquiry excepting at the price of first compelling petitioner to bear a charge which the tariff files of the Commission will confirm is not being imposed on any other industry in the United States.

EFFECT OF SUPREME COURT'S DECISION

The Supreme Court of the United States in United States v. American Sheet & Tin Plate Company, decided May 17, 1937, has affirmed the Commission's decisions in certain so-called Pittsburgh cases, condemning allowances for spotting services to certain industries in the Pittsburgh district. If this decision shall be accepted as approving in toto the original report in Ex Parte 104, Part 2, petitioner is not urging error in that report or taking exception to the principles therein announced but, on the contrary, invokes those principles as clear recognition of its right to have the terminal services now being performed at its plant by the Decatur lines included in the compensation afforded by the freight rates. There are no conditions of interruption or interference. As a general rule, the cars are not stopped at the interchange tracks, either inbound or outbound, and there is no special work done responsive to any desires or necessities of the industry, or any conditions of interruption or interference encountered in the spotting movements.

The petitioner filed its bill in the United States District Court at Springfield to set aside the Commission's 55th supplemental report and order as erroneous in law and thereupon the Commission postponed the effective date of its order from time to time. That case has not been heard; and the Supreme Court's decision would not be properly controlling in that case or require dismissal of the bill. The petitioner, having relinquished the allow-
173 ance and discontinued performing any service on behalf of the carriers, regards the question of the validity of the former allowance as a moot question; and the conditions having changed, petitioner is not interested in the validity or error of the 55th supplemental report, unless the same is to be interpreted by the Commission, by the carriers or the courts, as constituting a determination that the present arrangement whereby the carriers have been placing cars at the points of loading and unloading in petitioner's plant without earning or collecting any charges therefor in addition to the freight rates, is in anywise improper or preferential. If said 55th supplemental report is to be construed as in anywise validating or lending encouragement to the imposition of spotting charges for ordinary placements at petitioner's plant, your petitioner wishes to be understood as making a direct attack on the validity of said findings or determination, so interpreted, and wishes not to be in the position of making merely a collateral attack thereon in some other proceeding.

THE COMMISSION'S REJECTION OF PENNSYLVANIA RAILROAD TARIFF

Immediately after the preliminary hearing on petitioner's mandamus complaint, as aforesaid, the Pennsylvania Railroad Company made sixth section application to the Interstate Commerce Commission for permission to publish a spotting charge at the Staley plant, stating that it had no tariff authority for such charge. The Commission denied such sixth section permission; and petitioner is informed that the Commission notified the carrier that the reason the permission was denied was because "the service beyond interchange tracks is a plant service" not a service of transportation under the Act and that accordingly the carrier could not properly publish a tariff providing a charge for such service, their tariffs under section 6 being limited to services of transportation subject to the Act. If such ruling thus made was correct, petitioner suggests that the protested tariff I. C. C. No. 376 should come within the same ruling.

174 REQUEST FOR SUSPENSION AND HEARING

Wherefore, petitioner prays this Honorable Commission to suspend the aforesaid schedule, Agent R. A. Sperry's No. 79,

I. C. C. No. 376, as well as any further tariffs which may have been filed or may be filed making cross reference to said I. C. C. No. 376, and to enter into an investigation and hearing with regard to the lawfulness and propriety of the aforesaid charge, in accordance with Section 15 of the Act.

Dated at Chicago, Ill., October 27, 1937.

Respectfully submitted.

A. E. STALEY MANUFACTURING COMPANY,
By T. C. BURWELL,
Its Vice President and Traffic Manager.
CHARLES C. LE FORGEE,
NUEL D. BELNAP,
LUTHER M. WALTER,
JOHN S. BURCHMORE,
Its Attorneys.

LE FORGEE, SAMUELS & MILLER,
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WALTER, BURCHMORE & BELNAP,
2106 Field Building, Chicago, Ill.

175 *Appendix C to intervening petition*

Before the Interstate Commerce Commission

Ex Parte No. 104, Part II

A. E. STALEY MANUFACTURING COMPANY, TERMINAL ALLOWANCE—PRACTICES OF CARRIERS AFFECTING OPERATING REVENUES OR EXPENSES—TERMINAL SERVICES

PETITION FOR RECONSIDERATION OF REHEARING

Now comes A. E. Staley Manufacturing Company, petitioner, and respectfully petitions the Commission to set aside its order entered in the above entitled proceeding under date of May 22, 1936, attached to the so-called Fifty-fifth Supplemental Report therein, 215 I. C. C. 656, which order, as heretofore extended, is to become effective on or before June 15, 1937, or, (if necessary to permit due consideration of the matters herein referred to), to further postpone the effective date of said order; and petitioner requests a reconsideration of the matters covered by the said supplemental report or a rehearing as to the facts and circumstances obtaining at the industry of petitioner, to the end that this proceeding shall be dismissed as applied to petitioner or a new report and order entered approving the present arrangements and practices at its industry.

176 In this behalf, petitioner respectfully states:

I

This petition is based on a complete change in conditions and circumstances at petitioner's plant occurring subsequent to the time of the hearing before the Commission, which was held in September, 1932, or nearly five years ago.

II

At the time of the hearing and on the date of the entry of the aforesaid supplemental report, adopted May 22, 1936, plaintiff was receiving from each of the five railroads [1] reaching Decatur, Illinois, an allowance published in their tariffs on file with the Commission of actual cost but not to exceed $1.83 per car, for which allowance petitioner furnished the motive power and crews and moved the cars between the so-called interchange tracks at the entrances to its plant and the various points on standard gauge tracks within its plant at which the shipments were loaded into or unloaded from the cars.

Beginning on the 7th day of July, 1936, and continuously until the present time, by a new arrangement voluntarily entered into by the five railroads with one another and to which petitioner assented, the work of switching and spotting cars is no longer done by the petitioner and no allowance is received by petitioner; and one of the five carriers (the Wabash), is furnishing the engines and crews and performing all services of switching and spotting cars in inbound and outbound movements both interstate and intrastate. In the performance of this service, each of the four railroads entering Decatur, other than the Wabash, places its cars consigned to petitioner, whether loaded or empty, on the so-called interchange tracks at the east end or at the west end of the plant as may be more convenient, and removes from said interchange tracks the cars intended for them for movement out over their lines; and the Wabash Railway engines perform the service within the plant or beyond the interchange tracks. The
177 Wabash Railway usually takes the cars, which are routed over its lines in road-haul movement, to and from the loading and unloading points without stopping at the interchange tracks.

The Wabash engine also performs such intraplant movements as may be required by the petitioner, including so-called "second placements," and charges and receives the regular tariff intraplant

[1] Baltimore and Ohio, Illinois Central, Illinois Terminal, Pennsylvania, and Wabash.

service charges therefor. Such payments for such intraplant services are amounting to more than $1,000.00 per month, on the average.

In the performance of the spotting services, there is not and could not possibly be any interference with, or conditions causing interruption of, the work of the Wabash locomotives operating on behalf of each and all of the railroads entering Decatur; and there is nothing in the layout of the tracks or in the industrial operations of the petitioner which causes or could cause any interruption or interference with the spotting work of the Wabash locomotives.

III

Petitioner is not receiving a continuous or stand-by service, or a service performed "at the beck and call of the industry" or anything more or less than the ordinary and usual placement and delivery or initial switching performed by the railroads for industrial plants generally.

The service now rendered by the railroads and which they have been performing since the relinquishment of the allowance by petitioner, is the same service which the same railroads and other railroads furnish under their established freight rates for all of the competitors of petitioner in the manufacturing of corn products and in allied lines of business.

For illustration, and as shown by the record in this proceeding, all of the spotting services within the plant of the Corn Products Refining Company at Argo in the Chicago switching district, are performed for account of all of the railroads (including the Baltimore and Ohio, Illinois Central, Pennsylvania and Wabash) by the Indiana Harbor Belt Railroad Company under the
178 established Chicago rates and have been so performed for many years past.

At the plant of the American Maize Products Company at Roby, Indiana, in the Chicago switching district, all of the spotting services are and for many years have been performed by the Pennsylvania Railroad, under the established freight rates.

At Cedar Rapids, Iowa, the corn products refining plant of Penick & Ford, Ltd., Inc., is switched by the Milwaukee Road for the account of all Cedar Rapids lines, including the Illinois Central, and for many years past, and now, the spotting services are performed under the established freight rates.

At Pekin, Illinois, within the plant of the Corn Products Refining Company spotting services for account of all lines, including Illinois Central, Pennsylvania and Illinois Terminal, are

performed by the Peoria & Pekin Union Railway under the established Pekin-Peoria freight rates.

At Granite City, Illinois, the Terminal Railroad Association performs the spotting services within the plant of the Union Starch & Refining Company under the St. Louis freight rates on behalf of all of the railroads, including all of the five railroads who serve petitioner at Decatur.

At Clinton, Iowa, the North Western Railway performs the spotting services on behalf of all of the lines entering Clinton at the plant of the Clinton Company, manufacturers of corn products, etc.

At all of the aforesaid plants, the services performed by the railroads under the freight rates include the placement of the cars at the points of loading or unloading throughout the plants conveniently located for such purpose and as the plant desires.

By these statements petitioner is not intending to record a charge of unjust prejudice against petitioner and undue preference in favor of the other competing companies named but is asserting that as the result of the Commission's aforesaid order directed against the practices at petitioner's plant, if the railroads are required to cease and desist from spotting the cars without charges added to their established freight rates as they are
179 now doing and have been doing since July 7, 1936, petitioner will be subjected to an unprecedented charge and restriction of service not imposed against any other manufacturer of like products, thus leaving petitioner in a distinctly unfavorable competitive position and subject to a real discrimination. Palpably any effort to deprive the other manufacturers of the service they are now receiving would be to impose on the corn products industry a restricted measure of transportation service not applied against any branch of commerce in the country and one which would hardly be permitted or even considered by the Commission, we presume, unless it contemplated a revolutionary change in established transportation and rate practices of the carriers.

IV

Under date of June 16, 1936, your petitioner presented to the Commission its petition for rehearing in this proceeding embodying various assignments of error against the statements of facts and conclusions in the Fifty-fifth Supplemental Report and stating that petitioner had requested defendants to discontinue the allowance and institute the service by their own instrumentalities and agents. This petition was denied by the Commission by order entered November 9, 1936.

By several orders entered on June 30, September 10, December 7, 1936, and February 26, 1937, the Commission has successively

postponed the effective date of its aforesaid order of May 22, 1936, so that the same is now to become effective on June 15, 1327, as before stated.

Subsequent to the petition for rehearing of June 16, 1936, and beginning on July 7, 1936, the conditions actually changed and the new arrangement suggested in the petition of June 16, 1936, became effective.

Under date of June 2, 1936, petitioner filed in the United States District Court for the Southern District of Illinois, Southern Division, its bill in equity against the United States of America, Interstate Commerce Commission and the carriers seeking to set aside the Commission's aforesaid order as erroneous in fact and in law for reasons therein stated.

For purposes of this petition, no question is raised herein
180 as to the correctness of the aforesaid order as applied to the circumstances and conditions existing at and prior to the hearing in September 1932. Saving and reserving any exceptions and objections to the order, the purpose of this petition is to seek reconsideration of the subject matter on the ground of fundamental changes in conditions as hereinabove set worth, and the unjust prejudice which will result to petitioner if the service of the carriers under the rates is restricted at petitioner's plant by virtue of the terms of the Commission's order directed against the railroads.

Petitioner suggests that this is an emergency matter upon which it particularly prays immediate consideration of the Commission prior to the effective date of the order as postponed, so that all interested may be governed accordingly.

PRAYER

Wherefore, petitioner prays that the Commission will vacate and set aside its aforesaid order entered May 22, 1936, and which has been complied with by the filing with the Commission of supplements cancelling the allowance formerly accorded petitioner; that the Commission will reopen the said proceeding and reconsider the same, granting a rehearing thereof as to the plant of your petitioner if that may be considered necessary, to the end that the Commission shall order the dismissal of this proceeding as to petitioner and the approval of the new arrangement under which the carriers since July 7, 1936, have performed and are now performing and will continue to perform at petitioner's plant the usual placement services in spotting loaded and empty cars at points of loading and unloading, the same as performed at all other industrial plants served by them and without discrimination against petitioner; and for such other action

and order in the premises as the Commission may find appropriate.

181 Dated at Chicago, Illinois, this 29th day of May 1937.

A. E. STALEY MANUFACTURING COMPANY,
By T. C. BURWELL,
Its Vice President and Traffic Manager.
CHARLES C. LE FORGEE,
NUEL D. BELNAP,
LUTHER M. WALTER,
JOHN S. BURCHMORE,
Its Attorneys.

WALTER, BURCHMORE & BELNAP,
2106 Field Building, Chicago, Ill.
LE FORGEE, SAMUELS & MILLER,
Citizens Bank Building, Decatur, Ill.,
Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon respondents named in the order, by mailing a copy thereof properly addressed to each party.

Dated at Chicago, Illinois, this 29th day of May, 1937.

JOHN S. BURCHMORE,
Of Counsel for Petitioner.

[File endorsement omitted.]

183 In the District Court of the United States

[Title omitted.]

Order assembling a three-judge court, etc.

Filed April 15, 1943

An application having been made to the United States District Court for the Southern District of Illinois by plaintiffs for suspension of an order of the Interstate Commerce Commission, I have in conformance with Section 47 of Title 28, United States Code Annotated, assembled a three-judge court, the members of which are Honorable Evan A. Evans, Senior United States Circuit Judge in the Seventh Circuit, Honorable Walter C. Lindley, United States District Judge for the Eastern District of Illinois, and myself, to hear said application.

At the special request of the parties and with the consent of all parties hereto, it is ordered that said cause be heard on April 26th.

1943, at 10 o'clock A. M. at the United States Circuit Court of Appeals courtroom, 1212 Lake Shore Drive, Chicago, Illinois.

CHAS. G. BRIGGLE,
United States District Judge.

Entered April 15, 1943 at Springfield, Illinois.
[File endorsement omitted.]

185 In the District Court of the United States

[Title omitted.]

Order assigning judges

Filed April 27, 1943

The assignment of two judges by the undersigned being required under Sec. 380a, 28 U. S. C. A., Act of 1937, I hereby designate and assign the Honorable Evan A. Evans, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Walter C. Lindley, United States District Judge for the Eastern District of Illinois, to sit as judges in the above entitled cause.

EVAN A. EVANS,
Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

CHICAGO, ILLINOIS, *April 23, 1943.*

[File endorsement omitted.]

186 Be it remembered that during the course of the proceedings herein, there were presented to the three-judge court, certain proposed findings of fact and conclusions of law on behalf of the plaintiffs herein, which said proposed findings of fact and conclusions of law so proposed were adopted by the A. E. Staley Manufacturing Co., a corp., intervener herein, which said proposed findings of fact and conclusions of law were and are in the words and figures, following, to wit:

187 In the District Court of the United States

[Title omitted.]

Findings of fact proposed by plaintiffs

1. Plaintiffs are railroad corporations whose lines of railroad traverse the area included within the southern district of Illinois.

Each of said plaintiffs owns and operates lines of railroad which reach and serve the City of Decatur, Macon County, Illinois, in said district.

2. The A. E. Staley Manufacturing Company is engaged in the processing of grain, including corn and soybeans, and the manufacture of various products thereof at Decatur, Illinois. It receives annually by rail at its plant large quantities of grain,
188 soybeans and raw materials of all kinds, and ships by rail from its plant large quantities of products manufactured by it.

3. The Interstate Commerce Commission in a certain supplemental report, entered in a proceeding known as Ex Parte 104, Part II, Terminal Services, 215 I. C. C. 656, held upon the record then before it that the interchange tracks at the Staley plant described in the record were reasonably convenient points for the delivery and receipt of carload freight; that the transportation services for which these plaintiffs were compensated in their line-haul rates began and ended at said points, and that the services then performed by the A. E. Staley Manufacturing Company beyond those points were plant services. The Commission further held that by the payment of an allowance to the A. E. Staley Manufacturing Company for the services performed beyond those points on interstate shipments, these plaintiffs provided the means by which the A. E. Staley Manufacturing Company enjoyed a preferential service not accorded to shippers generally, and refunded or remitted a portion of the charges collected or received as compensation for the transportation of property in violation of Section 6 (7) of the Interstate Commerce Act, and respondents were ordered to cease and desist from further payment of said allowance.

4. The Commission's aforesaid order of May 22, 1936, was first issued to become effective September 15, 1936, and
189 was postponed from time to time and did not take effect until June 15, 1937. On June 23, 1936, however, the A. E. Staley Manufacturing Company ceased to perform switching service at its plant, the aforesaid allowance was thereupon discontinued and canceled, and the services connected with the placing of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company were performed by the Wabash Railroad beginning with June 23, 1936.

5. Plaintiffs, on November 15, 1937, in compliance with the findings of the Commission in its said report in Ex Parte 104, Part II, Terminal Services, 215 I. C. C. 656, established a charge of $2.27 per car against the A. E. Staley Manufacturing Company for the placement of cars at loading and unloading points within

said Company's plant. This charge was later increased to $2.50 per car. At the time the charge of $2.27 was proposed, the A. E. Staley Manufacturing Company filed a petition with the Commission protesting against the charge and seeking a suspension of the tariffs stating the charge. The A. E. Staley Manufacturing Company, in its protest, said that the application of the charge would create undue prejudice and unjust discrimination against the A. E. Staley Manufacturing Company.

6. The A. E. Staley Manufacturing Company filed several petitions with the Interstate Commerce Commission, asking the Commission to reopen the proceedings known as Ex Parte 104,
190 Part II, Terminal Services, 215 I. C. C. 656. (Petitions of June 16, 1936, May 29, 1937, and March 16, 1938.)

7. The Interstate Commerce Commission, by an order dated April 8, 1938, modified by its order of May 4, 1938, reopened the Ex Parte 104, Part II, Terminal Services, proceeding for further hearing, limited to the presentation of evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery, or receipt of cars handled to or from the Decatur, Illinois, plant of the A. E. Staley Manufacturing Company. A tentative report on the further hearing was proposed on or about November 1, 1938, by Special Examiner King of the Interstate Commerce Commission.

8. The Interstate Commerce Commission, in its report of May 6, 1941, said that an incomplete record resulted from that limited reopening, and on July 29, 1939, the Commission on its own motion, again reopened the proceeding for further hearing concerning, and limited to, the operating or other conditions at the A. E. Staley Manufacturing Company plant with respect to delivery or receipt of cars handled to or from its plant, including interchange arrangements with the connecting lines on such traffic, and to intraplant movements within said plant.

9. Notwithstanding this order of July 29, 1939, reopening the case for further hearing, the Commission took no action towards setting the case down for a further hearing.

191 10. Plaintiffs, on November 10, 1939, filed tariff schedules to become effective on December 15, 1939, whereby they proposed to cancel the charge of $2.50 then being collected from the A. E. Staley Manufacturing Company for the placement of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company and further provided that their freight rates to and from Decatur include the movement of the cars to and from loading and unloading points in the Staley plant. These tariff schedules were suspended by the Commission in Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois.

11. Following the suspension of plaintiff's tariff schedules, the Commission held a hearing at Decatur, Illinois, on April 23–25, 1940, in Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois, and Ex Parte No. 104, Part II, Terminal Services, A. E. Staley Manufacturing Company, Terminal Allowance.

On May 6, 1941, the Commission made its report in the two cases cited in the preceding paragraph, and entered an order on May 6, 1941, in the proceeding known as Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois.

192 12. The Commission, in its report of May 6, 1941, made the following finding:

"Considerable evidence was introduced showing spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

13. The Interstate Commerce Commission, notwithstanding these findings, and notwithstanding the fact that five years had elapsed since the date of the Commission's first report dealing with terminal services at the plant of the A. E. Staley Manufacturing Company, had made no investigation of the spotting practices at other plants, nor has it since May 6, 1941, done so.

14. The Commission's order of May 6, 1941, required the plaintiffs to cancel on or before June 20, 1941, the tariff schedules that they filed on November 10, 1939, under which they proposed to cancel the spotting charge of $2.50 then being collected from the A. E. Staley Manufacturing Company, for the placement of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company and defining the services as being included in the freight rates. The Commission's order was complied with by the plaintiffs.

193 15. Plaintiffs have not been required or directed by the Interstate Commerce Commission to make a charge for the services they perform in placing cars at points of loading and unloading within plant areas at Decatur or elsewhere, except in the case of the charge they have been required to continue against the A. E. Staley Manufacturing Company under the Commission's order of May 6, 1941. Plaintiffs have not been required or directed by the Interstate Commerce Commission to

make such a charge against any competitor of the Staley Company served or reached by them.

16. The Commission has not set forth in its report of May 6, 1941, in Investigation and Suspension Docket 4736, Switching Charges at Decatur, any facts that show what the services are that these plaintiffs render shippers generally in the receipt and delivery of cars on team tracks or industrial sidings and spurs. The Commission has not set forth in its report of May [redacted] 1941, any facts that show that, if the plaintiffs were permitted to place cars at points of loading and unloading within the plant of the A. E. Staley Manufacturing Company without the assessment of a charge over and above the line-haul rates, the A. E. Staley Manufacturing Company would receive a preferential service not accorded to shippers generally.

17. Plaintiffs' line-haul rates to and from Decatur, Illinois, include services beyond the railroad or break-up yards
195 in Decatur and services in connection with the placement of cars at points of loading and unloading within plant areas. The Commission, however, has required these plaintiffs to treat cars delivered to the A. E. Staley Manufacturing Company as delivered to that Company when placed in a location in a railroad yard wholly inaccessible to the A. E. Staley Manufacturing Company.

196 In the District Court of the United States

[Title omitted.]

Conclusions of law submitted by plaintiffs

I

It was arbitrary action on the part of the Interstate Commerce Commission to require the plaintiffs to continue over the years a spotting charge against the A. E. Staley Manufacturing Company, for placing cars within the Staley Company's plant when the Commission had failed and refused to make any investigation respecting the switching services rendered at the plants of the competitors of the Staley Company in the Decatur area and other places, in order to determine whether or not the switching services at the Staley Company's plant were actually in excess of those rendered without a spotting charge at the plants of these competitors of the Staley Company, and whether or not the Staley Company, if no charge were made against it for placing cars within its plant, would receive a preferential service as compared

with the switching services rendered at the plants of its competitors.

II

Basic Findings Nos. 3 and 5, and Conclusion No. 3, set
197 forth in the report of the Interstate Commerce Commission of May 6, 1941, upon which the order of May 6, 1941, was predicated, are not supported by the facts more particularly stated in the report, and are without support in the evidence and are contrary to the evidence.

III

The Interstate Commerce Commission failed and refused to apply and enforce the standards laid down in the Interstate Commerce Act that controls its action, and pursuant to which standards the rights of parties before it are to be determined.

IV

It was arbitrary action for the Interstate Commerce Commission to hold that cars destined to the plant of the A. E. Staley Manufacturing Company were delivered under the established interstate freight rates when those cars had been placed at a location in a railroad freight yard wholly inaccessible to the A. E. Staley Manufacturing Company, the established interstate rates including the services beyond such railroad freight yard and including the services connected with the placement of cars at points of loading or unloading within the plant areas.

V

The plaintiffs are entitled to a decree that the order of May 6, 1941, is null and void, and perpetually enjoining enforcement of the said order.

199 In the District Court of the United States

[Title omitted.]

Findings of fact and conclusions of law submitted by defendants

The above action came on for hearing on April 26, 1943, before a statutory court, sitting in the Court of Appeals Building, Chicago, Ill., the court consisting of the Honorable Evan A. Evans, United States Circuit Judge, the Honorable Charles G. Briggle, United States District Judge, and the Honorable Walter C. Lind-

ley, United States District Judge, counsel for plaintiffs, intervener and defendants being present, and the cause being submitted upon the pleadings and evidence introduced by plaintiffs and upon the oral arguments and briefs, the court, being fully advised in the premises, enters the following as its findings of fact and conclusions of law:

Findings of fact

(1) This is a suit to set aside the report and order of the Interstate Commerce Commission entered May 6, 1941, entitled "Report on Further Hearing of Issues Included in the Fifty-fifth Supplemental Report" (245 I. C. C. 383) in "Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part
200 II, Terminal Services," said Fifty-fifth Supplemental Report being entitled "A. E. Staley Manufacturing Company Terminal Allowance"; (215 I. C. C. 656) said report and order also embraced I. & S. Docket No. 4736, Switching Charges at Decatur, Ill., which latter proceeding involved tariffs canceling charges for spotting services within the plant of said Staley Company.

The proceeding arose as follows:

The Commission, upon its own motion, instituted in 1931 the proceeding entitled Ex Parte 104, the full title being stated above, which was an investigation of the practices of Class I rail carriers, in respect to terminal switching services and allowances paid by railroads therefor, where industries performed their intraplant switching or spotting service. Hearings were held throughout the country, in which many carriers and industries participated. In said proceeding, evidence was taken as to conditions existing and practices followed at a great number of industrial plants and at loading platforms and team tracks. On May 14, 1935, the Commission made its report (209 I. C. C. 11) in which it stated its general conclusions as to the obligations of the line-haul carriers to render intraplant spotting, and the principles governing such obligations. The Commission subsequently made a number of supplemental reports in said proceeding, applying the principles stated in the general report of May 14, 1935, to specific plants and industries, concerning which evidence had been received. The Fifty-fifth of these supplemental reports discussed intraplant spotting at the plant of the A. E. Staley Manufacturing Company, intervening plaintiff herein. It was made May 22, 1936 (215 I. C. C. 656), and in it the Commission found that the intraplant spotting then performed by the company, for which the railroads paid it an allowance, was a private service not within the
201 obligations of the railroads, and that the assumption of cost of such service by the railroads resulted in a violation of

section 6 (7) of the Interstate Commerce Act. The Commission made an order requiring the carriers to cease and desist from the payment of said allowance.

A suit brought by the Staley Company to set aside said order of May 22, 1936 (the Fifty-fifth Supplemental Report, 215 I. C. C. 656), was dismissed by the plaintiff without prejudice.

Subsequently the Staley Company ceased performing its intraplant spotting and arranged with the railroads to do it, the latter establishing a charge of $2.50 per car for said service in addition to the line haul rates charged upon the shipments handled. The Staley Company, by petition for reconsideration or rehearing, advised the Commission of changed conditions which, it contended, put upon the carriers the obligation of performing or paying for the intraplant spotting, and the Commission reopened the proceeding for further hearing of issues involved in said Fifty-fifth Supplemental Report.

In the meantime, the Illinois Central, the Terminal and the Wabash, by schedules effective December 5, 1939, proposed to cancel their charge for the spotting service within the Staley plant. The cancelation tariff was suspended by the Commission and became the subject of Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill. The reopened Fifty-fifth Supplemental proceeding was consolidated with I. & S. No. 4736, and additional evidence received. A report was proposed by an examiner to which exceptions were filed, and the consolidated proceeding was briefed and argued orally before the Commission. In the report of the Commission, made May 6, 1941, 245 I. C. C. 383, it was held that under the conditions existing at the time the evidence was taken in said reopened proceeding and in the I. & S. proceeding, the performance
202 by the railroads without charge in addition to the line-haul charges of the intraplant spotting service at the Staley plant, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would be violative of section 6 (7) of the Act; that the existing charge of $2.50 per car for intraplant spotting at the Staley plant was not unlawful and that the schedules proposing to cancel this charge had not been justified, and the suspended schedules were ordered canceled.

The details of the various proceedings before the Commission and the courts, and the acts and conduct of the carriers and the Staley Company are fully and correctly stated in the Commission's report on further hearing of May 6, 1941 (245 I. C. C. 383), and the court hereby refers to said report for a statement thereof and adopts and makes said report a part of these findings.

(2) The Commission's original report of May 14, 1935, in Ex Parte 104, Part II, aforesaid, was made upon voluminous evidence, and its Fifty-fifth Supplemental Report of May 22, 1936, in the same proceeding, was based upon said evidence and none other. Additional evidence was received by the Commission upon rehearing in said proceeding and in I. & S. Docket No. 4736, aforesaid, all of which was considered and relied upon by the Commission in making its report of May 6, 1941.

The plaintiffs introduced in evidence in this court a transcript of that portion of the evidence received by the Commission subsequent to the making of the Fifty-fifth Supplemental Report of May 22, 1936, and omitted to introduce all the evidence taken prior to said date, upon which said reports of May 14, 1935, May 22, 1936, and May 6, 1941, respectively, were in part based, and upon the findings and conclusions of all of said reports are based the orders of the Commission in this suit sought to be set aside.

203 (3) The Commission's Fifty-fifth Supplemental Report and its subsequent report of May 6, 1941, both above described, together with the evidence introduced in this court, show that the plaintiff, A. E. Staley Manufacturing Company, owns and operates an extensive industrial plant at Decatur, Ill., at which it processes and deals extensively in grain of various kinds, and manufacturers grain products. Its plant covers a considerable area and various portions thereof are served by an extensive arrangement of standard gauge railroad tracks connecting the various warehouses, mills, and elevators within the plant and affording connections with trunk-line railroads serving the city of Decatur. The manner of interchange of cars between the Staley plant and the trunk lines of said railroads and also the practices of the carriers connected with movements within the plant area are set out in detail in the Commission's Fifty-fifth Supplemental Report, aforesaid, and in its report of May 6, 1941 (215 I. C. C. 656; 245 I. C. C. 383), to which reference is herein made.

On November 15, 1937, the railroads serving Decatur established a charge of $2.27 per car for spotting cars within the Staley plant; this charge was later increased to $2.50 per car. By tariff schedules filed to become effective December 15, 1939, the Illinois Central, the Illinois Terminal, and the Wabash proposed to cancel the $2.50 spotting charge, above referred to, and this proposed cancelation tariff was suspended by the Commission on its own motion and became the subject of Investigation and Suspension Docket No. 4736, in which proceeding the Commission made its order of May 6, 1941, requiring the cancelation of

said cancelation tariffs, thus leaving in effect the $2.50 per car spotting charge. The plaintiff carriers and the Staley Company in their complaint herein allege that this charge results in unreasonable rates, in unjust discrimination, and in undue
204 prejudice, and assert that the carriers were and are legally obligated to render these spotting services to the Staley Company without any charge therefor, in addition to the line-haul charges.

The Commission in its report of May 6, 1941, found that the spotting movements covered by the $2.50 per car charge are in many instances not direct but involve one or more additional movements such as to scales, intermediate storage tracks, or to cleaning tracks, and in all instances must be coordinated with the industrial operations of the Staley Company; that the tracks in the Burwell yard are reasonably convenient points for the delivery of traffic to the Staley Company, and for the receipt of such outbound traffic of the Staley Company as goes to that yard; that the tracks in the storage and general yards of the Wabash are reasonably convenient points for the receipt of such outbound traffic of the Staley Company as does not move through the Burwell yard but through the west end of the plant. All services between the tracks immediately hereinabove described and points of loading and unloading within the plant area of the Staley Company are services in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks and industrial sidings or spurs.

The Commission concluded that upon cars to and from the Staley Company the service of transportation by the carriers under their line-haul rates and charges is completed by placement of inbound loading of cars on tracks in the Burwell yard and begins by removal of outbound loaded cars from tracks in the Burwell yard when such cars pass through that yard and by removal of outbound loaded cars from tracks in the storage yard or general yard of the Wabash when the cars do not pass through the Burwell yard but move outbound through the west end of the Staley Company's plant; that all services between the Burwell or the storage or general yard of the Wabash and points
205 of loading or unloading within the plant area of the Staley Company are plant services rendered the Staley Company and are not common carrier services covered by the line-haul rates and charges of the carriers; that the performance by the carriers or any of them, without charge in addition to the line haul rates and charges, of services (a) from the Burwell yard tracks to points of unloading within the plant area of the

Staley Company (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges received as compensation for the transportation of property in violation of section 6 (7) of the Interstate Commerce Act.

That the existing charge of $2.50 per car for spotting services above described has not been shown to be unlawful.

The court finds that the above findings and conclusions of the Commission are supported by substantial evidence and the court concurs in and adopts the same.

(4) The court finds that the evidence received by the Commission supports the conclusions and findings of the Commission made in all of its reports hereinabove referred to.

Conclusions of law

The court states the following as its conclusions of law:

(1) The Commission's report and order upon further hearing of the issues included in the Fifty-fifth Supplemental Report in Ex Parte 104, Par. II, and in Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill., both more fully described in Findings of Fact herein, were justified by the
206 law and evidence before the Commission and constituted a valid exercise of the Commission's power under the Interstate Commerce Act.

(2). The findings set forth in the Commission's reports of May 14, 1935, May 22, 1936, and May 6, 1941, respectively, in said proceedings, considered as a whole, are sufficient to sustain and warrant the order denying the Staley Company's petition for rehearing and ordering cancelation by the carriers of the tariffs under suspension.

(3) In view of the failure of the plaintiffs to introduce in evidence in this court a transcript of all the evidence before the Commission in the procedings described in the Findings of Fact herein, it will be presumed that the statements of fact set out in the Commission's reports are sustained by the evidence received by the Commission, and that the said order of the Commission of May 6, 1941, is supported by substantial evidence.

(4) The evidence is insufficient to warrant this court in finding that the circumstances and conditions under which spotting is performed by the railroads at competing plants without charge in addition to the line-haul charges, are substantially similar to those prevailing at the Staley plant.

(5) This court should not find that the charges for spotting at the Staley plant are unduly or unlawfully prejudicial or preferential because certain competitive plants receive similar service without charge.

(6) The construction of the law applied by the Commission in its reports and order was and is correct. The record of the proceedings before the Commission indicates that the plaintiffs have been accorded the full hearings required by law in the premises.

207 (7) The relief which the plaintiffs pray should be denied and their suit dismissed for want of equity.

_____,
United States Circuit Judge.

_____,
United States District Judge.

_____,
United States District Judge.

Dated_____, 1943.

[Indorsed, received May 10, 1943. G. W. Schwaner, Clerk.]

208 In the District Court of the United States

[Title omitted.]

Order submitted by defendants

The above entitled suit coming on to be heard and the Court having been advised in the premises, and findings of fact and conclusions of law having been filed,

It is ordered, adjudged, and decreed, that the Complaint be, and it is hereby, dismissed.

_____,
United States Circuit Judge.

_____,
United States District Judge.

_____,
United States District Judge.

[Indorsed, received May 10, 1943. G. W. Schwaner, Clerk.]

209–A In the District Court of the United States for the Southern District of Illinois, Southern Division

Civil Action No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before a three-judge District Court composed of Evans, Circuit Judge, and Lindley and Briggle, District Judges

Opinion

Filed June 10, 1943

BRIGGLE, District Judge:

This is a proceeding to set aside the order of the Interstate Commerce Commission, entered May 6, 1941, entitled Report on Further Hearing of Issues Included in the 55th Supplemental Report, 245 I. C. C. 383, which report and order may be said to be supplementary to Ex Parte 104, Practices of Carrier Affecting Operating Revenues or Expenses; Part 2, Terminal Services, 209 I. C. C. 11. The Plaintiffs are common carriers whose

209–B lines of railroad traverse and serve the city of Decatur and the surrounding area in the Southern District of Illinois. The Intervenor, A. E. Staley Manufacturing Company is engaged in the processing of grain, including corn and soybeans and the manufacture of various products therefrom at Decatur, Illinois. It receives annually by rail at its plant large quantities of grain, soy beans, and raw materials of all kinds and ships by rail from its plant large quantities of manufactured products.

The history of the proceeding is long. Briefly stated, it arose in 1931, when the Commission upon its own motion instituted a proceeding entitled Ex Parte 104 which was an investigation of practices of Class 1 Rail Carriers in respect to terminal switching charges and allowances paid by carriers where industries performed their intraplant switching or spotting services. Hearings were held throughout the country in which many industries and carriers participated and a large volume of evidence was taken. On May 14, 1935, the commission made its report, 209 I. C. C. 11, in which it stated its general conclusions as to the obligations

of line haul carriers to render spotting service and the principles governing such obligations. Subsequent thereto the Commission made numerous supplemental reports undertaking to apply the
209–C principles there enunciated to specific plants and industries, some of which have been before and have been approved by the Supreme Court, notably United States v. American Sheet and Tin Plate Co., 301 U. S. 402; Goodman Lumber Co. v. United States, 301 U. S. 669; A. O. Smith Corporation v. United States, 301 U. S. 669; United States v. Pan American Petroleum Corporation, 304 U. S. 156. The 55th of these Supplemental Reports, made on May 22, 1936, concerned spotting service at the plant of the Intervenor, A. E. Staley Manufacturing Company. In this report the Commission found that the intraplant spotting of cars then performed by the Staley Company, for which the railroads paid Staley an allowance was a private service not within the obligations of the carriers and covered by their line-haul rate and that the assumption of such obligation by the carriers was a violation of Section 6 (7) of the Interstate Commerce Act. The Commission made an order requiring the carriers to cease and desist from the payment of such allowances.

Subsequently, the Staley Company ceased performing such spotting service and arranged with the carriers to do the same and a charge of Two Dollars and Fifty Cents ($2.50) per car was established for such service, in addition to the line-haul rates. Later the plaintiff carriers by schedules effective December 15,
209–D 1939, proposed to cancel such charge for spotting services in the Staley plant but the Commission by their order of May 6, 1941, suspended the operation of such proposed schedule, leaving the spotting charge against Staley in full force and effect. Neither Plaintiffs or Intervenor challenges in this proceeding the validity of prior orders entered in Ex Parte 104, but the principal point of contention arises from the assertion of the Plaintiffs and the Intervenor and denial by defendants that by the order of May 6, 1941, the Staley Company is unduly prejudiced by reason of the fact that competing industries at Decatur, Illinois, and other places within the state are receiving spotting services from the carriers without charge. The carriers and Staley assert that the order exacting a charge from Staley amounts to a continuing discrimination against Staley.

The Commission made six findings of fact and six conclusions of law. Finding of fact five is, as follows:

"5. All services between the tracks described in the immediately preceding finding and points of loading and unloading within the plant area of the Staley Company are services in excess

of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs."

Conclusion of law three is, as follows:

"3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a)
209-E from Burwell yard tracks to points of unloading within the plant area of the Staley Company (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the act."

Among other contentions, it is claimed by Plaintiffs and Intervenor that finding five is unsupported by the evidence or by the finding of any basic facts to support it, and that Conclusion 3 is, therefore, unwarranted.

At the hearing before the Commission much evidence was introduced on this point to show that spotting service was being rendered by the carriers without charge other than the line-haul tariffs, to numerous industries at Decatur and throughout Illinois and particularly to those engaged in direct competition with Staley. We think it fair to say that the evidence in the record is uncontradicted that Staley is the only concern at Decatur
209-F or within a reasonable radius thereof that is now being required to pay a spotting charge. At Decatur, Illinois, the Archer-Daniels-Midland Co., Decatur Soya Bean Products Co., and Spencer Kellogg & Sons, all of whom are in direct competition with Staley are without exception receiving spotting service under conditions comparable to those existing at the Staley plant. The Corn Products Refining Co. at Argo, Illinois, shown by the evidence to be one of the largest producers of corn products in the country, with some eighteen or twenty miles of track within its plant and with at least twenty points of loading and unloading within the plant, has always received spotting service. This plant is one of Staley's chief competitors. The Plaintiffs, Illinois Central Railroad Company and Illinois Terminal Railroad Company make no spotting charge for the delivery or receipt of freight upon their entire systems with the single exception of the Staley plant. The Plaintiff, Wabash Railroad Company was obliged to except the Staley Plant from the operation of their general rule

that no charge be made for spotting cars. Witnesses appeared from numerous competitors of Staley, such as American Maize Products Co., Penick & Ford, Ltd., Hubinger Co., Union Starch & Refining Co., and Allied Mills, all asserting that they knew of no industry required to pay a spotting charge similar to Staley.

209-G The Commission brushed aside this feature of the case with the following statement in its report:

"Considerable evidence was introduced showing that spotting is performed without charge in addition to the line-haul rates at various plants, some of which complete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigation in connection therewith."

While the Commission says that the evidence does not satisfactorily show that the conditions at other plants are substantially similar to those at the Staley plant, yet the only evidence in the record on this subject very strongly tends to show similarity. By its further statement that if it did it would only demonstrate the need for investigations at other plants, it appears that the Commission was of the belief that each case must stand on its own bottom and be considered by the Commission independent of any other and without relation to the palpable inequities bound to flow from an order not applicable to all similarly situated. We think this too narrow a view. It is suggested that it is no defense for one charged with an offense to retort that others are

209-H guilty of like offenses. However sound this doctrine may be in relation to criminal proceedings it does not seem to be quite appropriate to the situation here presented. Where one industry of many in a highly competitive field is singled out and subjected to a tariff not imposed on any other and under compulsion of the order of the Commission obliged to pay such tariff for a number of years without relief and without action to establish like tariffs for competing industries, the order becomes an instrument of destruction. Such treatment long continued could only mean extinction of the industry thus affected. So surely as "the power to tax is the power to destroy," so is the power of rate regulation when applied inequitably.

We think the finding of the Commission that the practice of furnishing spotting service to Staley by the carriers would accord Staley more favorable treatment than others, not supported

by the evidence. The substantial evidence indicates quite the contrary. It indicates that under the present order Staley is being discriminated against. It thwarts the real purpose of the Commission to remove discrimination in certain instances where carriers may have accorded a preferential service to one customer over another. The order here obliges the carriers to discriminate against Staley, and, as they assert against their will, and in violation of Sections 2 and 3 of the Act.

209–I We think that United States v. American Sheet and Tin Plate Co., supra, is not to be deemed authority contrary to the view here expressed. While it is true that the Supreme Court there said in affirming the order of the Commission that the Commission had properly held that each case must be decided upon the circumstances disclosed, yet the question of discrimination here presented was not before the Court. In that case and in United States v. Pan American Petroleum Co., supra, the Court was dealing with a number of like orders in relation to a group of competing industries and no question of one industry having received different treatment from all others was before the Court.

To give full meaning to the Act and to translate the intention of Congress into equitable application requires a consideration of the Act as a whole. We know from Sections 2 and 3[1]

209–J that it was the express purpose of Congress to require carriers to accord equal and just treatment to all shippers. The evil to be corrected in this respect was the tendency of carriers in some instances to accord some shippers more favorable treatment than others. It was expressly declared a vicious practice to give one shipper a preference or advantage over another, or conversely, to subject any shipper to any undue or unreasonable prejudice or disadvantage. It cannot be gainsaid that that is precisely what the carriers are being forced to do in the case at bar under compulsion of the order in question. The

[1] SEC. 2. Special rates and rebates prohibited. If any common carrier subject to the provisions of this chapter shall, directly or indirectly by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

SEC. 3. Preferences; interchange of traffic; terminal facilities—(1) Undue preferences or prejudices prohibited. It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Commission in its purpose to do justice to the carriers has inadvertently brought about such flagrant injustice to the intervening shipper as to shock the conscience of a court of equity. So far as we know, this precise question has never been before any Court, but with a firm belief in the doctrine that no wrong shall exist without a remedy it seems to us that the Commission must meet the problem head on and devise some over-all method of
209–K dealing with competitive industries that will eliminate the injustice here so apparent. Otherwise, the purpose of the Act will be thwarted and the resultant inequities will outweigh the evils sought to be corrected. See U. S. v. C. M. St. P. & P. R. Co., 294 U. S. 499.

We think the order in question discriminatory, unjust, and unreasonable, and in so far as finding five and conclusion three are concerned not supported by the evidence. The prayer for injunction is allowed.

Intervenor's request for accounting and reimbursement is a question for the Commission.

EVANS dissents.

210 In the District Court of the United States

[Title omitted.]

Findings of fact

Filed June 10, 1943

1. Plaintiffs are railroad corporations whose lines of railroad traverse the area included within the southern district of Illinois. Each of said plaintiffs owns and operates lines of railroad which reach and serve the City of Decatur, Macon County, Illinois, in said district.

2. The A. E. Staley Manufacturing Company is engaged in the processing of grain, including corn and soybeans, and the manufacture of various products thereof at Decatur, Illinois. It receives annually by rail at its plant large quantities of grain, soybeans and raw materials of all kinds, and ships by rail from its plant large quantities of products manufactured by it.

3. The Interstate Commerce Commission in a certain supplemental report, entered in a proceeding known as Ex Parte 104, Part II, Terminal Services, 125 I. C. C. 656; held upon the record then before it that the interchange tracks at the Staley plant described in the record were reasonably convenient points for the delivery and receipt of carload freight; that the transportation services for which these plaintiffs were compensated in their line-haul rates began and ended at said points, and that the

services then performed by the A. E. Staley Manufacturing Company beyond those points were plant services. The Commission further held that by the payment of an allowance to the A. E. Staley Manufacturing Company for the services performed beyond those points on interstate shipments, these plaintiffs provided the means by which the A. E. Staley Manufacturing Company
211 enjoyed a preferential service not accorded to shippers generally, and refunded or remitted a portion of the charges collected or received as compensation for the transportation of property in violation of Section 6 (7) of the Interstate Commerce Act, and respondents therein were ordered to cease and desist from further payment of said allowance.

4. The Commission's aforesaid order of May 22, 1936, was first issued to become effective September 15, 1936, and was postponed from time to time and did not take effect until June 15, 1937. On June 23, 1936, however, the A. E. Staley Manufacturing Company ceased to perform switching service at its plant, the aforesaid allowance was thereupon discontinued and canceled, and the services connected with the placing of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company were performed by the Wabash Railroad beginning with June 23, 1936.

5. Plaintiffs, on November 15, 1937, in compliance with the findings of the Commission in its said report in Ex Parte 104, Part II, Terminal Services, 215 I. C. C. 656, established a charge of $2.27 per car against the A. E. Staley Manufacturing Company for the placement of cars at loading and unloading points within said Company's plant. This charge was later increased to $2.50 per car. At the time the charge of $2.27 was proposed, the A. E. Staley Manufacturing Company filed a petition with the Commission protesting against the charge and seeking a suspension of the tariffs stating the charge. The A. E. Staley Manufacturing Company, in its protest, said that the application of the charge would create undue prejudice and adjust discrimination against the A. E. Staley Manufacturing Company.

6. The A. E. Staley Manufacturing Company filed several petitions with the Interstate Commerce Commission, asking the Commission to reopen the proceedings known as Ex Parte 104, Part II, Terminal Services, 215 I. C. C. 656. (Petitions of June 16, 1936, May 29, 1937, and March 16, 1938.)

7. The Interstate Commerce Commission, by an order dated April 8, 1938, modified by its order of May 4, 1938, reopened the Ex Parte 104, Part II, Terminal Services, proceeding for
212 further hearing, limited to the presentation of evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery, or receipt of cars

handled to or from the Decatur, Illinois, plant of the A. E. Staley Manufacturing Company. A tentative report on the further hearing was proposed on or about November 1, 1938, by Special Examiner King of the Interstate Commerce Commission:

8. The Interstate Commerce Commission, in its report of May 6, 1941, said that an incomplete record resulted from that limited reopening, and on July 29, 1939, the Commission, on its own motion, again reopened the proceeding for further hearing concerning, and limited to, the operating or other conditions at the A. E. Staley Manufacturing Company plant with respect to delivery or receipt of cars handled to or from its plant, including interchange arrangements with the connecting lines on such traffic, and to intraplant movements within said plant.

9. Notwithstanding this order of July 29, 1939, reopening the case for further hearing, the Commission took no action towards setting the case down for a further hearing.

10. Plaintiffs, on November 10, 1939, filed tariff schedules to become effective on December 15, 1939, whereby they proposed to cancel the charge of $2.50 then being collected from the A. E. Staley Manufacturing Company for the placement of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company and further provided that their freight rates to and from Decatur include the movement of the cars to and from loading and unloading points in the Staley plant. These tariff schedules were suspended by the Commission in Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois.

11. Following the suspension of Plaintiffs' tariff schedules, the Commission held a hearing at Decatur, Illinois, on April 23–25, 1940, in Investigation and Suspension Docket No. 4736, Switching Changes at Decatur, Illinois, and Ex Parte No. 104, Part II, Terminal Services, A. E. Staley Manufacturing Company, Terminal Allowance.

On May 6, 1941, the Commission made its report in the
213 two cases cited in the preceding paragraph, and entered an order on May 6, 1941, in the proceeding known as Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois.

12. The Commission, in its report of May 6, 1941, made the following finding:

"Considerable evidence was introduced showing spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting

is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

13. The Interstate Commerce Commission, notwithstanding these findings, and notwithstanding the fact that five years had elapsed since the date of the Commission's first report dealing with terminal services at the plant of the A. E. Staley Manufacturing Company, had made no investigation of the spotting practices at other plants, nor has it since May 6, 1941, done so.

14. The Commission's order of May 6, 1941, required the plaintiffs to cancel on or before June 20, 1941, the tariff schedules that they filed on November 10, 1939, under which they proposed to cancel the spotting charge of $2.50 then being collected from the A. E. Staley Manufacturing Company, for the placement of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company and defining the services as being included in the freight rates. The Commission's order was complied with by the plaintiffs.

15. Plaintiffs have not been required or directed by the Interstate Commerce Commission to make a charge for the services they perform in placing cars at points of loading and unloading within plant areas at Decatur or elsewhere, except in the case of the charge they have been required to continue against the A. E. Staley Manufacturing Company under the Commission's order of May 6, 1941. Plaintiffs have not been required or directed by the Interstate Commerce Commission to make such a charge against any competitor of the Staley Company served or reached by them.

214 16. The Commission has not set forth in its report of May 6, 1941, in Investigation and Suspension Docket 4736, Switching Charges at Decatur, any facts that show what the services are that these plaintiffs render shippers generally in the receipt and delivery of cars on team tracks or industrial sidings and spurs. The Commission has not set forth in its report of May 6, 1941, any facts that show that, if the plaintiffs were permitted to place cars at points of loading and unloading within the plant of the A. E. Staley Manufacturing Company without the assessment of a charge over and above the line-haul rates, the A. E. Staley Manufacturing Company would receive a preferential service not accorded to shippers generally.

Conclusions of law

1. It was arbitrary action on the part of the Interstate Commerce Commission to require the plaintiffs to continue over the years a spotting charge against the A. E. Staley Manufacturing

Company, for placing cars within the Staley Company's plant when the Commission had failed and refused to make any investigation respecting the switching services rendered at the plants of the competitors of the Staley Company in the Decatur area and other places, in order to determine whether or not the switching services at the Staley Company's plant were actually in excess of those rendered without a spotting charge at the plants of these competitors of the Staley Company, and whether or not the Staley Company, if no charge were made against it for placing cars within its plant, would receive a preferential service as compared with the switching services rendered at the plants of its competitors.

2. Basic Finding No. 5 and Conclusion No. 3 set forth in the report of the Interstate Commerce Commission of May 6, 1941, upon which the order of May 6, 1941, was predicated, are not supported by the facts more particularly stated in the report, and are without support in the evidence and are contrary to the evidence.

3. The Interstate Commerce Commission failed and refused to apply and enforce the standards laid down in the Interstate Commerce Act that control its action, and pursuant to which standards the rights of parties before it are to be determined.

4. The order in question is arbitrary, discriminatory,
215 unjust and inequitable.

5. The plaintiffs are entitled to a decree that the order of May 6, 1941, is null and void, and perpetually enjoining enforcement of the said order.

WALTER C. LINDLEY
CHAS. G. BRIGGLE

Evans dissents, not from these findings but from the conclusion that plaintiffs are entitled to a decree.

[File endorsement omitted.]

217 In the District Court of the United States for the Southern District of Illinois, Southern Division

Civil Action No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Final decree filed July 14, 1943

On the twenty-sixth day of April 1943, this cause came on for final hearing on the plaintiffs' prayer for a permanent injunction,

and all parties being present by counsel, the Court, after hearing the evidence and the arguments of counsel and considering the briefs field, and being fully advised in the premises, finds the facts and the law to be as contained in the findings of fact, conclusions of law, and the opinion filed herein on June 10, 1943, which findings of fact, conclusions of law, and opinion are made a part of this Final Decree with the same force and effect as if they had been set out in full herein.

Whereupon, it is ordered, adjudged, and decreed as follows:

(1) That the order of the Interstate Commerce Commission entered on May 6, 1941, in the proceeding known as Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois, is hereby set aside and annulled.

218 (2) That the United States of America and the Interstate Commerce Commission, and each of them, and their officers, attorneys, agents, and employes be and they are hereby permanently and forever enjoined from enforcing or in any manner attempting to enforce the said order of May 6, 1941.

(3) That the United States of America and the Interstate Commerce Commission, and each of them, and their officers, attorneys, agents, and employes be and they are hereby permanently and forever enjoined from interfering with or prohibiting the posting, the filing, and the establishment of the tariff schedules filed by the plaintiff to become effective on December 15, 1939, which tariff schedules were suspended by the Interstate Commerce Commission's order of November 21, 1939, in Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois, and which tariff schedules the plaintiffs herein were required to cancel by said order of the Interstate Commerce Commission of May 6, 1941, set aside and annulled by this Decree.

(4) That this Court retains jurisdiction of this cause to enforce the terms of this Decree and to make such further orders herein as may be necessary to enforce said terms.

Dated July 14th, 1943.

WALTER C. LINDLEY,
United States District Judge.
CHAS. G. BRIGGLE,
United States District Judge.

EVANS, Circuit Judge, dissenting.

[File endorsement omitted.]

220 In the District Court of the United States

[Title omitted.]

Defendants' petition for stay of injunction pending appeal to and decision by the Supreme Court of the United States

Filed July 31, 1943

Defendants respectfully petition the Court to stay, pending appeal to and decision by the Supreme Court, the injunction granted plaintiffs under the Court decree entered July 14, 1943, setting aside and enjoining the Interstate Commerce Commission order of May 6, 1941, by the terms of which decree the Interstate Commerce Commission and the United States are enjoined from enforcing said order and from interfering with or prohibiting the establishment by plaintiffs of tariff schedules canceling switching and spotting charges for such services, rendered within the plant of the A. E. Staley Manufacturing Company at Decatur, Ill. Grounds for this petition are assigned as follows:

1. Defendants are preparing and are ready to submit petition for appeal from the decree of the Court entered July 14, 1943, to the Supreme Court of the United States.

2. The enforcement of the injunction granted by decree of the Court would result in confusion and possibly inequality as to the freight charges for switching services at the plant of the A. E. Staley Company at Decatur, Ill., since the decree and injunction controls the three plaintiff rail carriers and permits those
221 three carriers to cancel the charge for switching service within the Staley Company plant, without interference on the part of the Interstate Commerce Commission, while two other carriers, the Baltimore & Ohio and the Pennsylvania railroads, who serve the same plant and who are not parties to this action, are not subject to the control of the Court, are not required to establish tariffs canceling the same switching charge, and are left entirely under the jurisdiction and control of the Interstate Commerce Commission. Stay of the injunction granted by the decree of the Court is necessary to avoid confusion and inequality of rates and charges where three of the five carriers are permitted, without interference by the Interstate Commerce Commission, to provide rates and charges that would be or may be different from rates and charges made by two other carriers who are controlled by the Interstate Commerce Commission.

Under provisions of Section 6 (3) and (7) of the Interstate Commerce Act, rail carriers are prohibited from demanding, collecting or receiving a greater or less or different compensation

for transportation of property than the rates and charges specified in the tariffs filed and published and in effect at the time, and no change shall be made in rates or charges filed and published, except after 30 days' notice to the Interstate Commerce Commission and to the public, provided the Commission may, in its discretion, for good cause shown, allow such changes upon less than the notice specified. Under provisions of Section 15 (7) of the Interstate Commerce Act, the Commission is authorized to suspend tariffs filed by carriers, to investigate and determine the lawfulness of rates and charges thereunder. The effect of the Court decree herein is to permit the filing by the three carriers who are plaintiffs herein, of tariffs canceling switching charges under existing tariffs, with injunction prohibiting any interference or action by the Commission to prevent such tariffs from becoming effective, while leaving the two other carriers who serve the same plant under the same established tariffs controlled and under the jurisdiction of the Commission, without requirement that they establish tariffs canceling the switching charges involved.

222 3. Stay of the injunction granted by the decree herein is necessary to preserve the status of the subject matter involved in this action, pending decision of the Supreme Court upon appeal. Under the report and order of the Interstate Commerce Commission entered May 6, 1941, the three rail carriers, plaintiffs herein, were ordered to cancel tariffs which they had filed effective December 15, 1939, proposing to cancel charges of $2.50 per car for switching service within the Staley Company plant as provided for under existing tariffs. The Commission order became effective August 15, 1941, prior to filing of action herein on June 1, 1942, and the proposed tariffs were canceled effective August 15, 1941. Established tariffs presently on file with the Interstate Commerce Commission, provide for continuation of the $2.50 per car switching charge within the Staley Company plant, not only as to the three carriers who are plaintiffs herein, but also as to the other two carriers who are serving the Staley Company plant, and who are not parties to this action. Tariffs of all five carriers establishing such a charge have been in force and effect for several years prior to the Commission order of May 6, 1941, were in effect at the time of filing this action, at the time of the Court hearing at the time of entering decree herein, and are still in effect.

4. Stay of the injunction granted by the decree herein, pending decision upon appeal to the Supreme Court, is necessary to avoid unnecessary and burdensome litigation. Ultimately the lawfulness of any change of rates and charges as permitted by decree and injunction herein, must depend upon the final decision of the Supreme Court upon appeal. If the decree herein is set aside

and reversed upon appeal, the three carriers, plaintiffs herein, who are permitted to cancel the switching charges, would be required to recover such charges so cancelled from the Staley Company, all of which may result in further litigation. In that event there would be no problem as to the charges already
223 collected prior to the grant of the injunction, and if the injunction is stayed pending the appeal period, there would be no necessity for recovery by the carriers of the charges for the five or six months' period of appeal. If the decree of the Court herein is affirmed upon final decision of the Supreme Court, enforcement of the injunction herein granted, while awaiting that decision, would resolve only the question of charges for some five or six months, and leave unsettled and unresolved the question of the same kind of charges covering a period of several years.

5. Rights of all parties herein concerned will be preserved if the injuction granted by the decree of the Court entered July 14, 1943, is stayed pending appeal to and decision by the Supreme Court. If stay of the injunction granted by the decree herein is not ordered by the Court, the three plaintiff carriers may cancel the switching charge which is now established under existing tariffs of all five carriers, but only for the relatively short period of time between the effective date of new tariffs that may be filed by these three carriers, plaintiffs herein, up to the date of the final decision by the Supreme Court upon appeal. At most this time would be not more than five or six months. Involved in this action is not only the charges for that short period, but also for the much longer period since the filing of tariffs to become effective December 15, 1939, as suspended by the Interstate Commerce Commission. Where freight charges involved cover a period of some three and one-half years, it would appear impractical and inappropriate to enjoin continuance of such charges for the short period of five or six months while awaiting the final decision of the Supreme Court upon appeal. In this connection attention is invited to the statutory provision which prohibits effectiveness of tariffs filed except upon 30 days' notice to the Commission and the public. No tariffs proposing to cancel the $2.50 charge have as yet been filed by plaintiffs, and cannot become effective until 30 days after filing. This will shorten the period involved in appeal by at least 30 days.

224 6. Stay of the injunction may be conditioned, if that is desired by other parties and deemed appropriate by the Court, upon impounding or segregation, by plaintiff carriers of charges involved subject to further orders of the Court. The effect of the Court decision, decree and injunction is to relieve the Staley Company of charges of switching services under ex-

isting tariffs, as to the three plaintiff carriers, immediately rather than to await final decision by the Supreme Court. That can control only the short period of appeal, and will not apply to the two other carriers who are not parties to this action or to charges for several years prior to the entering of the decree herein.

7. If the injunction herein is not stayed, the alternative necessary to the maintenance of the status during appeal, is a requirement by the Court that the Staley Company pay the charges involved into the hands of the Clerk of the Court, to be there impounded and subject to Court order, or that the Staley Company be required to provide proper and ample surety that all such charges shall be immediately paid to the proper carriers, in the event the decision herein is set aside and reversed upon appeal. That alternative is a more complicated method of maintaining the status of the subject matter of this action pending appeal than to simply stay the injunction granted by the decree of the Court.

8. Litigation in respect to switching service within the plant of the Staley Company has continued over a period of some twelve years, either before the Interstate Commerce Commission or in the courts, without final decision. Such a final decision may now be expected in five or six months. It would appear reasonable that for such a relatively short period the status of the subject matter of this action should be preserved pending final decision by the Supreme Court. Stay of the Court
225 injunction pending appeal would almost certainly avoid other litigation. Since the rights of all parties concerned may be amply protected during the appeal period, if the injunction is stayed, it is respectfully submitted that the Court should grant this petition and order stay of the injunction, granted under the decree entered July 14, 1943, pending appeal to and decision by the Supreme Court of the United States.

Respectfully submitted.

EDWARD DUMBAULD,
Special Assistant to the Attorney General.
ROBERT L. PIERCE,
Special Assistant to the Attorney General.
ALLEN CRENSHAW,
Attorney, Interstate Commerce Commission.

TOM C. CLARK,
Assistant Attorney General,
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

[File endorsement omitted.]

227 In The District Court of The United States

[Title omitted.]

Order staying injunction granted by decree

Entered July 14, 1943

The above action came on for further hearing upon defendants' petition for stay of injunction, granted under decree of court entered July 14, 1943, by the terms of which the order of the Interstate Commerce Commission entered May 6, 1941, in the case of A. E. Staley Manufacturing Company, Terminal Allowances, Ex Parte 104, upon rehearing, and in Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois, was set aside, annulled and enjoined, and defendants were enjoined from interfering with or prohibiting the posting, filing and establishment of tariff schedules, filed by plaintiffs to become effective December 15, 1939, and which were suspended by the Interstate Commerce Commission in the proceedings I. & S. 4736 and ordered cancelled by the order of May 6, 1941, and the Court having heard and considered Defendants' Petition for Stay of Injunction pending decision upon appeal to and decision by the Supreme Court in the United States, together with briefs and arguments of counsel for parties to this action, and it appearing that defendants have taken appeal to the Supreme Court,

228 and the Court having decided, in the exercise of its discretion as provided by law that stay of injunction is necessary to maintain the status quo of matters subject to this action pending the appeal;

It is therefore ordered and adjudged that the injunction granted under decree of Court entered July 14, 1943, be, and it is hereby stayed, pending appeal to and decision of the Supreme Court of the United States, said injunction for such time to be ineffective and inoperative, and to become effective and operative only upon decision by the Supreme Court affirming the decree entered herein July 14, 1943.

Stay of injunction as here provided is conditioned upon, and plaintiff rail carriers are hereby ordered to impound and hold, subject to the future order of this Court, all charges collected from the A. E. Staley Manufacturing Company, intervener

herein, for terminal or switching services rendered that company from and after July 14, 1943, under then existing tariff schedules.

Entered this 24th day of August 1943.

EVAN A. EVANS,
U. S. Circuit Judge, 7th C. C. A.
WALTER C. LINDLEY,
U. S. District Judge.
CHAS. G. BRIGGLE,
U. S. District Judge.

[File endorsement omitted.]

230 In The District Court of The United States

[Title omitted.]

Petition for appeal

Filed August 26, 1943

The United States and the Interstate Commerce Commission, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree of the District Court of the United States for the Southern District of Illinois, Southern Division, entered in said court on July 14, 1943, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

(s) EDWARD DUMBAULD,
Special Assistant to the Attorney General.

(s) ROBERT L. PIERCE,
Special Assistant to the Attorney General.

(s) ALLEN CRENSHAW,
Attorney, Interstate Commerce Commission.

(s) TOM C. CLARK
Asst. Attorney General.

(s) DANIEL W. KNOWLTON
Chief Counsel,
Interstate Commerce Commission.

[File endorsement omitted.]

235 In the District Court of the United States

[Title omitted.]

Assignment of errors

Filed August 26, 1943

Now come the United States and the Interstate Commerce Commission, defendants in the above-entitled cause, by their counsel and in connection with their appeal, and file the following assignment of errors upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States, from the final decree of this court, entered July 14, 1943.

The District Court erred:

1. In not dismissing plaintiffs' complaint.

2. In setting aside and enjoining the Interstate Commerce Commission order of May 6, 1941.

3. In entering its findings of fact and conclusions of law.

4. In deciding that findings of the Interstate Commerce Commission, in its report and order of May 6, 1941, are not supported by substantial evidence.

5. In deciding fact questions independently, where there were no decisions of the Interstate Commerce Commission upon
236 such questions, which might be subject to court review.

6. In giving consideration, as a basis of its findings of fact, conclusions of law, and decision, to the partial and incomplete record, introduced in court, of proceedings before the Interstate Commerce Commission.

7. In not restricting its consideration to facts stated in the Interstate Commerce Commission's report of May 6, 1941, 245 I. C. C. 383, in Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Allowances, 209 I. C. C. 11, and the 55th Supplemental Report to Ex Parte 104, A. E. Staley Manufacturing Company, Terminal Allowances, 215 I. C. C. 656 where the whole record of proceedings before the Interstate Commerce Commission was not offered in the court action.

8. In its failure to recognize and consider that the proceedings before the Interstate Commerce Commission, wherein the order of May 6, 1941, was entered, included not only proceedings in the case of Investigation and Suspension Docket No. 4736, but also proceedings, with which the I. & S. No. 4736 was consolidated,

in Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, decided by the Interstate Commerce Commission in 209 I. C. C. 11, and proceedings, upon rehearings, in the case of A. E. Staley Manufacturing Company the 55th Supplemental Report to Ex Parte 104, decided by the Interstate Commerce Commission in 215 I. C. C. 656.

9. In holding that the carriers are being forced, under compulsion of the order of May 6, 1941, to subject the A. E. Staley Company to undue or unreasonable prejudice or disadvantage.

10. In holding that the Interstate Commerce Commission had refused to make any investigation respecting switching services rendered at industrial plant of competitors of the Staley Company, located in the Decatur, Ill., area or other places.

237 11. In deciding the lawfulness of the Interstate Commerce Commission order of May 6, 1941, wherein the Commission held that switching services within the switching plant of the Staley Company at Decatur, Ill., without charge, is an unlawful practice under provisions of Section 6 (7) of the Interstate Commerce Act, depends upon simultaneous enforcement by the Commission, under investigation initiated upon its own motion, as to alleged similar unlawful practices that may be extended to other industrial plants of similar character, located in nearby areas to and competitors of the Staley Company.

12. In deciding that the Interstate Commerce Commission order of May 6, 1941, resulted in discrimination and preference against the Staley Company, under provisions of Sections 2 and 3, respectively, of the Interstate Commerce Act.

13. In considering and deciding a question of discrimination and preference under provisions of Sections 2 and 3 of the Interstate Commerce Act, a question not within its jurisdiction, where such question had not been heard, considered, or decided by the Interstate Commerce Commission.

14. In deciding the fact question that switching services rendered other industrial plants, located in the same general area with and competitors of the Staley Company, were the same or similar to the switching services rendered the Staley Company plant.

15. In entering its finding No. 9 that "Notwithstanding this order of July 29, 1939, reopening the case for further hearings, the Commission took no action towards setting the case down for further hearings."

238 Wherefore, defendants pray that the said decree be reversed.

S EDWARD DUMBAULD,
Special Assistant to the Attorney General.

S ROBERT L. PIERCE,
Special Assistant to the Attorney General.

S ALLEN CRENSHAW,
Attorney, Interstate Commerce Commission.

S TOM C. CLARK,
Assistant Attorney General.

S DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

[File endorsement omitted.]

240 In The District Court of the United States

[Title omitted.]

Order allowing appeal

Filed August 26, 1943

In the above-entitled cause, United States and the Interstate Commerce Commission, having made an filed a petition praying on appeal to the Supreme Court of the United States from the final decree of this court in this cause entered on July 14, 1943, and having also made and filed an Assignment of Errors and a Statement of Jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

Ordered and decreed, That the appeal be, and the same is hereby, allowed as prayed for.

Dated August 24, 1943.

(s) CHAS. G. BRIGGLE,
United States District Judge.

[File endorsement omitted.]

242 In The District Court of The United States

[Title omitted.]

Notice of appeal

Filed August 26, 1943

To the ATTORNEY GENERAL FOR THE STATE OF ILLINOIS:

You are hereby notified that the District Court of the United States for the Southern District of Illinois, Southern Division, on August 24, 1943, filed and entered an order allowing an appeal by the United States and the Interstate Commerce Commission to the Supreme Court of the United States from a decree filed and entered on July 14, 1943, in the above-entitled cause, and that the citation signed by such Court on August 24, 1943, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendants' jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

243 This notice is given to you pursuant to the provisions of U. S. Code, Title 28, Sec. 47a, enacted March 3, 1911, c. 231, Sec. 210.

Dated August 24, 1943.

(s) EDWARD DUMBAULD,
Special Assistant to the Attorney General.
(s) ROBERT L. PIERCE,
Special Assistant to the Attorney General.
(s) ALLEN CRENSHAW,
Attorney,
For the Interstate Commerce Commission.

(s) TOM C. CLARK,
Assistant Attorney General,
(s) DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

Received a copy of the foregoing notice this — day of August 1943.

(s) GEORGE F. BARRETT,
Attorney General of the State of Illinois.

[File endorsement omitted.]

275 In the District Court of the United States

[Title omitted.]

Defendants' (appellants') praecipe for transcript of record

Filed Aug. 26, 1943

To the CLERK OF THE ABOVE-NAMED COURT:

You are hereby requested to prepare a transcript of the record in the above-entitled cause to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript of record the following, to wit:

(1) Petition and Appendices A, B, C, and D thereto, filed June 1, 1942.

(2) Answer of the United States.

(3) Answer of the Interstate Commerce Commission.

(4) Motion of the A. E. Staley Manufacturing Company for leave to intervene as plaintiffs.

(5) Order of Court allowing intervention of A. E. Staley Manufacturing Company, as plaintiffs.

(6) Complaint upon intervention of A. E. Staley Manufacturing Company, as plaintiffs, together with Appendices A, B, and C thereto.

276 (7) Records of the Interstate Commerce Commission, upon rehearing of A. E. Staley Manufacturing Company, Terminal Allowance, Ex Parte 104, and I and S No. 4736, consisting of documents and photostats of records of the Interstate Commerce Commission as certified by the secretary as offered in evidence herein by plaintiffs, and or intervenor and designated Exhibit numbered two to thirty-five inclusive of plaintiffs.

(8) Records of the Interstate Commerce Commission of original proceedings in A. E. Staley Manufacturing Company, Terminal Allowance, Ex Parte 104, consisting of documents and photostats of records of the Interstate Commerce Commission as certified by the secretary as offered in evidence herein by plaintiffs and or intervenor A. E. Staley Company and designated Exhibit No. one of plaintiffs.

(9) All other records of proceedings before the Interstate Commerce Commission not more specifically designated under (7) and (8) above, as offered in evidence herein by plaintiffs, intervenors, or other parties, and in event no such other records

were offered in evidence, statement of the Clerk to effect that records transmitted under (7) and (8) above, constitute all records of the Interstate Commerce Commission, offered in evidence herein.

(10) Plaintiffs' requested findings of fact and conclusions of law.

(11) Intervenor's requested findings of fact and conclusions of law.

(12) Interstate Commerce Commission and other defendants' requested findings of fact and conclusions of law.

(13) Findings of fact and conclusions of law, and final decree, as entered by the District Court.

277 (14) Petition for appeal.

(15) Notice of appeal and acknowledgment of service.

(16) Assignment of error.

(17) Order allowing appeal.

(18) Notice to the Attorney General of the State of Illinois.

(19) Citation on appeal.

(20) Statement of jurisdiction of the Supreme Court of the United States.

(21) Statement by defendants-appellants directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States.

(22) Petition of defendants to stay injunction granted under Court decree pending appeal, or in the alternative to require impounding of freight charges involved pending appeal.

(23) Order of the District Court granting defendants' petition to stay injunction pending appeal.

(24) Praecipe for transcript of record and acknowledgment thereof, and

(25) All docket entries in their appropriate order.

S EDWARD DUMBAULD,
Special Assistant to the Attorney General.
S ROBERT L. PIERCE,
Special Assistant to the Attorney General.
S ALLEN CRENSHAW,
Attorney, Interstate Commerce Commission.

(S) TOM C. CLARK,
Assistant Attorney General.

(S) DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

278 Service of the foregoing praecipe for transcript of record and receipt of copy thereof are hereby acknowledged this 24th day of August 1943.

(S) LOUIS H. STRASSER,
Attorney for Wabash Railroad Company,
Plaintiff.

(S) ELMER A. SMITH,
Attorney for Illinois Central Railroad Company,
Plaintiff.

(S) R. F. B. BUTLER,
Attorney for Illinois Terminal Railroad Company,
Plaintiff.

(S) JOHN S. BURCHMORE,
Attorney for A. E. Staley Manufacturing Company,
Intervenor.

[File endorsement omitted.]

280 In the District Court of the United States

[Title omitted.]

Petition to enlarge the time to docket and file the record in the Supreme Court

Filed Sept. 27, 1943

Defendants-appellants petition the Court, pursuant to Rule 11 of the rules of the Supreme Court of the United States, to enlarge to and including November 6, 1943, the time within which to docket this cause and to file the record in the office of the Clerk of the Supreme Court of the United States, upon the following grounds:

Order allowing appeal of defendants-appellants from the judgment of the District Court to the Supreme Court of the United States, and citation to plaintiffs-appellees, were signed by the Honorable Charles W. Briggle, United States District Judge, on August 24, 1943, the citation being made returnable on October 4, 1943. It appears that the Clerk of the District Court will be unable to prepare and submit the record on appeal to the Clerk of the Supreme Court of the United States within the time prior

to October 4, 1943, and it is therefore necessary to enlarge the time as is hereby sought.

Dated September 24, 1943.

Respectfully submitted.

EDWARD DUMBAULD,
Special Assistant to the Attorney General.
ALLEN CRENSHAW,
Attorney, Interstate Commerce Commission.

WENDELL BERGE,
Assistant Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

282 In the District Court of the United States

[Title omitted.]

Order enlarging time to docket cause and file record in the Supreme Court of the United States

Filed Sept. 27, 1943

Upon petition of defendants-appellants duly made, and for good cause shown,

It is ordered, that the time within which to docket the appeal herein, and to file the record upon appeal in the office of the Clerk of the Supreme Court of the United States, be, and is hereby, enlarged to and including the 6th day of November 1943.

Dated this 27th day of September 1943.

CHAS. W. BRIGGLE,
United States District Judge.

[File endorsement omitted.]

284 In the District Court of the United States

[Title omitted.]

Petition to have original exhibits Nos. 1 to 35, inclusive, transmitted to the clerk of the Supreme Court of the United States, as a part of the record upon appeal

Filed Sept. 27, 1943

Defendants-appellants petition the Court, pursuant to Rule 10, paragraph (4) of the rules of the Supreme Court of the United

States, to authorize and instruct the Clerk of the District Court to transmit as a part of the record upon appeal to be filed in the Supreme Court of the United States, original of all exhibits offered and introduced herein, the same being marked as Exhibits Nos. 1 to 35, inclusive, upon the following grounds:

Order allowing appeal to defendants-appellants from the decree of the District Court to the Supreme Court of the United States and citation to plaintiffs-appellees, were signed by the Honorable Charles W. Briggle, District Judge, on August 24, 1943; appeal papers, including "Defendants' (Appellants') Praecipe for Transcript of Record," were filed in the office of the Clerk of the District Court on August 26, 1943, wherein request was made to include, as a part of the transcript of record upon appeal, all "documents and photostats of the records of the Interstate Commerce Commission, as certified by the Secretary
285 as offered in evidence by plaintiffs or intervenors, and designated Exhibits numbered 1 to 35, inclusive"; it appears that there are only originals of such exhibits on file thereby involving much expense and work to prepare copies thereof for the transcript of record on appeal; and it appears that such exhibits will be necessary or desirable for the inspection of the Supreme Court.

Dated September 24, 1943.

Respectfully submitted.

EDWARD DUMBAULD,
Special Assistant to the Attorney General.
ALLEN CRENSHAW,
Attorney, Interstate Commerce Commission.
WENDELL BERGE,
Assistant Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

[File endorsement omitted.]

287 In the District Court of the United States

[Title omitted.]

Order to transmit, as part of record upon appeal to the Supreme Court, original of all exhibits

Filed Sept. 27, 1943

Upon application of defendants-appellants duly made, for good cause shown, and it appearing that original exhibits numbered

1 to 35, inclusive, of which there are no copies, as part of the transcript of record upon appeal to the Supreme Court of the United States, should be inspected by said Supreme Court:

It is ordered, That the Clerk of this Court transmit to the Supreme Court of the United States, as a part of the transcript of record upon appeal, to be filed, and in the same manner as other parts of the record, all exhibits offered in evidence herein numbered 1 to 35, inclusive, and that such original papers be returned to the Clerk of this Court after final decision of the Supreme Court of the United States upon appeal, unless the said Supreme Court shall desire to retain such exhibits for its files.

Dated this 27th day of September 1943.

CHAS. G. BRIGGLE,
Charles G. Briggle,
United States District Judge.

[File endorsement omitted.]

289 In District Court of The United States For The Southern District of Illinois, Southern Division

Docket entries

Civil Action No, 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

FILINGS—PROCEEDINGS

Month	Date Day	Year	
June	1,	1942—	Complaint Filed.
June	1,	1942—	Summons issued (3) copies U. S. Marshal for Service.
June	5,	1942—	Summons filed (Ex. 6/2/42 on Defts.).
July	6,	1942—	Answer of Interstate Commerce Commission filed.
July	21,	1942—	Answer of The United States of America filed.
Aug.	31,	1942—	Leave to A. E. Staley Mfg. Co. to filed Int. Pet. ent. (Briggle).
Aug.	31,	1942—	Intervening Petition of A. E. Staley Mfg. Co. filed.

Month	Date Day	Year	
Apr.	15,	1943—	Case set for hearing by agreement of all parties 4/26/43 at 10 A. M. at C. C. A. Bldg., Chicago before a Three Judge Court filed & ent. (Briggle, J.).
Apr.	27,	1943—	Plaintiffs' Exhibits 1, 2, & 3 received from Chi. (In file.)
Apr.	23,	1943—	Evan A. Evans, U. S. Circuit Judge & Walter C. Lindley, U. S. District Judge for Eastern Dist. designated to sit as Judges filed & ent. (Filed in this office 4/27/43) (Evans, J.).
Apr.	28,	1943—	Exhibits 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, (31 Out), 31, 32, 33, 34, 35 & Pltfs.' Exhibit 4 received from Chicago.
Apr.	28,	1943—	Entire file & all exhibits delivered to Judge Briggle.
May	1,	1943—	Memorandum of Points & Authorities Relied on by U. S. filed.
May	3,	1943—	Brief of Interstate Commerce Commission filed-copies mailed to Judge Lindley and Judge Evans and 1 delivered to Judge B.
May	10,	1943—	Original & 3 copies of Findings of Fact & Conclusions of Law proposed by Defts. & draft of order dismissing suit received from Interstate Commerce Commission—one copy mailed to each of Judges sitting in case & original placed in file.
June	10,	1943—	Memorandum Opinion filed.
June	10,	1943—	Findings of Fact & Conclusions of Law filed & ent. (Evans dissents.) (Lindley & Briggle.)
June	15,	1943—	Memo., Findings & Conclusions noted on this docket 6/15/43 by M. L.
July	14,	1943—	Final Decree filed & ent. (Evans dissents) (Lindley & Briggle.) 2 cert. copies Decree to Mr. Graham. Dockets & Indexes Made and Costs Taxed.
July	31,	1943—	Defts. Pet. for Stay of Injunction Pending Appeal to & decision by Supreme Court of U. S. filed.
Aug.	4,	1943—	Plaintiffs reply to defendants petition for Stay of Inj. pending appeal filed—copy to each Judge who sat in Stat. Ct.

Month	Date Day	Year	
Aug.	4,	1943—	Intervener's Reply to Defendant's Petition for Stay of Inj. pending appeal filed—copy to each Judge who sat in Stat. Court.
290	Aug. 10,	1943—	Defts. Pet. for Stay set for Hearing at Court of Appeals Bldg., Chicago, Tuesday, Aug. 24, 1943 at 10 A. M. ent. (Briggle, J.)
Aug.	13,	1943—	Brief for the Interstate Commerce Commission on Defts. Pet. for Stay of Inj. Pending Appeal filed.
Aug.	24,	1943—	Memorandum Reply for Intervener to Brief of Interstate Commerce Commission on Defts. Pet. for Stay of Inj. filed.
Aug.	26,	1943—	Intervener's Reply to Defts. Pet. for Stay of Inj. filed.
Sept.	2,	1943—	Order Staying Injunction Granted by Decree entered July 14, 1943 filed & ent. (Evans, Lindley & Briggle)—all counsel notified by W. J. S.
Aug.	26,	1943—	Petition for Appeal filed (by U. S. & I. C. C.)
Aug.	26,	1943—	Order allowing appeal filed & ent. (Briggle, J.)—dated 8/24/43.
Aug.	26,	1943—	Citation on appeal & Service thereon filed.
Aug.	26,	1943—	Notice of Appeal to Wabash R. R., I. C. R. R., I. T. R. and Staley Mfg. Co. filed.
Aug.	26,	1943—	Notice of Appeal to Attorney General for State of Ill. filed.
Aug.	26,	1943—	Assignment of Errors filed.
Aug.	26,	1943—	Statement by Defts.-Appellants directing attention to paragraph 3 of rule 12 of the Revised Rules of the Supreme Court of the United States filed.
Aug.	26,	1943—	Jurisdictional statement by Defts.-Appellants under Rule 12 of the Revised Rules of the Supreme Court of the United States filed.
Aug.	26,	1943—	Defendants' (Appellants) praecipe for Transcript of Record filed.
Sept.	27,	1943—	Pet. to enlarge time to docket & file Record in Supreme Court filed.
Sept.	27,	1943—	Order enlarging time to docket cause & file record in Supreme Court of U. S. to 11/6/43 filed & ent. (Briggle, J.)

Date Month	day	year	
Sept.	27,	1943—	Pet. to have original exhibits Nos. 1 to 35, inclusive, transmitted to Clerk of Supreme Court as a part of record on appeal filed.
Sept.	27,	1943—	Order to transmit, as part of Record upon Appeal, to the Supreme Court Original of All Exhibits filed & ent. (Briggle, J.)
Oct.	11,	1943—	Preparing Transcript of Record on appeal.
Oct.	11,	1943—	Certificate and Seal attached to transcript of record.
Oct.	11,	1943—	Certifying Original Exhibits 1, 2, 3, and 4.
Oct.	11,	1943—	One Certificate and Seal to each Exhibit (4 Exhibits).

292 [Citation in usual form showing service on Elmer A. Smith, et al., omitted in printing.]

294 In United States District Court

Statement of clerk under item 9 of defendants' (appellants') praecipe for transcript of record

I, G. W. Schwaner, Clerk of the District Court of the United States in and for the Southern District of Illinois, hereby state that the records of the Interstate Commerce Commission referred to as Items 7 and 8 of Defendants' (Appellants') Praecipe for Transcript of Record herein, which records constitute Plaintiffs' and/or Intervenei's Exhibits 1, 2, 3, and 4 offered in evidence in this Court, have been duly certified as a part of the transcript of record upon appeal to be filed pursuant to the order of this Court made and entered in said cause on the 27th day of September, A. D. 1943, and I further state that the said records of the Interstate Commerce Commission above referred to as Plaintiffs' and/or Intervener's Exhibits 1, 2, 3, and 4 constitute all the records of the Interstate Commerce Commission offered in evidence herein.

Dated at Springfield, Illinois, this 11th day of October A. D. 1943.

[SEAL]

G. W. SCHWANER,
Clerk, U. S. District Court.

295 [Clerk's certificate to transcript omitted in printing.]

298 *Plaintiffs' Exhibit No. 1*

Vol. 3, p. 2220:

W. C. GLYNN, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. OMEARA:

Q. Please state your name and business?

A. W. C. Glynn, Assistant to General Traffic Manager, Pennsylvania Railroad System, Philadelphia.

* * * * *

P. 2271:

Cross-examination by Director BARTEL:

Q. Do you have any industries, Mr. Johnston, on this list, in your territory, where the plant secures some allowance for performing a spotting service for the plant as well as an allowance for spotting cars at other plants?

A. Yes, we have one. That is the A. E. Staley Manufacturing Company, at Decatur, Illinois, tariff I. C. C. 205. There is a provision in that tariff to the effect that the allowance will be paid for cars containing traffic of the Staley people, and also an iron company—the Mississippi Valley Iron Company, I think is the name.

Q. Now, that Mississippi Valley Iron Company cannot be reached direct by your rails, can it?

A. Not directly; but we can reach them without using the Staley tracks.

Q. How could you reach them without using the Staley tracks?

A. By paying a reciprocal switching charge of the Baltimore & Ohio Railroad.

P. 2272:

Q. Is this steel plant local to the Baltimore & Ohio?

A. Well, only in the sense that that is the only line haul road that gets in.

Q. That is what I mean.

299 P. 2272:

A. In other words, the plant has two entrances, one of which is accessible to the B. & O. and the other is accessible to the tracks of the Staley plant.

Q. The B. & O. is the only trunk line that serves it direct?

A. That is right.

Q. And the other carriers reach it through absorption of the B. & O.'s switching charges or through the plant facility of the Staley Company?

A. That is correct.

Q. Now, is your allowance, which you say you have through the Big Four, under a reciprocal switching absorption? The B. & O., if their tariffs are worded in the same way as the balance of them, do not provide for an allowance of switching service—that is, where they merely get a switching rate—so that the effect would be, as I understand it now, if you wanted to reach the Staley plant through the B. & O. reciprocal arrangements, the B. & O. would take it to the Staley plant interchange track and then you would pay the allowance in that way. Is that correct?

A. I think that would be the practice. The fact is that formerly we reached the Staley plant by absorbing the switching of the Illinois Central usually, and they in turn made delivery to the plant, and they made a terminal allowance to the plant. We did not publish and did not grant a terminal allowance there until after such time as we had established a physical interchange with the plant tracks of our own. I say "of our own." It is a joint interchange between the Pennsylvania, the Illinois Central and the Illinois Terminal there.

Q. That is; a joint track which you three carriers built from the connection with the extension of the plant tracks of the Staley Company to a connection with the Illinois Terminal, as I recall it.

A. I think that is correct.

Q. And then you got trackage rights over the Illinois Terminal to your connection with that carrier?

P. 2273:

A. We got trackage rights to a piece of Illinois Terminal track, to a point where it was necessary to establish some reconstruction, and the reconstruction was joint construction. I would here just like to suggest I am not thoroughly familiar with that, and we have an operating witness here who can testify, in case you want him; but I think those are the facts.

* * * * * *

300 Vol. 4, p. 3287:

M. V. Hynes, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. WEISER:

Q. What is your full name?

A. M. V. Hynes.

p. 3288:

Q. What is your position with the Baltimore & Ohio?

A. Superintendent, Indianapolis Division.

Q. What is the extent of the Indianapolis Division?

A. From Morton, Ohio, to Springfield, Illinois, exclusive of Springfield.

Q. And your jurisdiction extends over the entire Indianapolis Division?

A. Yes, sir.

* * * * *

P. 3289:

Q. Is there any other industry within your jurisdiction which has a system of tracks and where there is any allowance made?

A. Yes; this list stops at Decatur, exclusive of Decatur. At Decatur we have the A. E. Staley Company.

Q. Can you just explain briefly whether the Baltimore & Ohio is the only carrier that reaches that plant?

A. No; all lines in Decatur reach this plant.

Q. How is it served?

A. It is served by engines of the Staley Company; the railroad companies placing their empties on designated tracks in most instances outside the plant of the Staley Company, on tracks partially owned by the railroad company and one track in particular practically owned by the Staley Company. The Staley Company brings the loads out to these designated tracks, where they are picked up by our engines or the engines of the other railroads.

* * * * *

P. 3296:

Q. Do you know of any other industry to whom you grant an allowance which you do not reach directly, in your territory?

301 A. None except the three mentioned.

Q. Which three?

A. Staley, Kingan, and the Prospect Street plant.

Q. Those two you reach directly?

A. Yes.

Q. My question had reference to those you do not reach directly.

A. No; that is the only one.

Q. Do you know whether or not the spotting was ever performed by respondent at either the A. E. Staley Company plant at Decatur, or this Kingan Company plant at Indianapolis?

A. I cannot answer as to the Kingan plant. I think they always performed their own service. As to the Staley Company, when it was first built it was a small concern and served only by a single track from what is now the B. & O., and a single track from the Wabash or possibly two tracks from the Wabash.

The Wabash did their part of the work there, and the old C. H. & D., now a part of the Baltimore & Ohio, did their part of the work.

P. 3297:

However, the plant grew rapidly. Our engines were getting in one another's way and delaying things, until finally Staley put on his own engine.

Q. When did that happen; do you know?

A. I do not recall just when he put it on, but I would say perhaps in 1917 or 1918, possibly later than that.

Q. Do you happen to know when the allowance was first published and authorized by your company?

A. No; I do not recall the date.

* * * * *

P. 3314:

J. A. Simmons, called as a witness, being first duly sworn, testified as follows:

P. 3315:

Direct examination by Mr. WEBBER:

Q. What is your full name, Mr. Simmons?

A. J. A. Simmons.

302 Q. What is your position with the Baltimore & Ohio.

A. Freight traffic manager of the Baltimore & Ohio at Indianapolis.

* * * * *

P. 3318:

Q. As to Kingan & Company; what is the allowance?

A. The allowance is 78 cents per car, covered by tariff.

Q. And if I remember correctly the Staley Plant; what is the allowance there?

A. The A. E. Staley Plant at Decatur; the allowance is $1.65 per car.

Q. Do you think of any services that have not already been mentioned that are performed by the Baltimore & Ohio in your territory, that are at all peculiar to such territory?

A. There is nothing.

Mr. WEBBER. That is all I have.

Cross-examination by Mr. HAGERTY:

Q. Is this A. E. Staley plant reached direct by the Baltimore & Ohio Railroad?

A. Yes, sir. If you wish me to give you a better description of that situation I can do it.

P. 3319:

Q. No, I think we have it pretty well covered. I was not sure however that in the prior testimony that had been developed.

A. Yes, sir.

* * * * *

P. 3328:

By Mr. GWYNN:

Q. Neither the A. E. Staley Company or the United States Cast Iron Pipe & Foundry Company are in your territory; are they?

A. The Staley Company is.

Q. Probably this question has been answered, but is that plant served by some other carrier than the B. & O.?

303 A. Yes, sir; it is served by the Wabash. Originally it was served by the Wabash and Baltimore & Ohio. About a year ago the other three lines there, the Pennsylvania, Illinois Terminal, and Illinois Central hooked up various lines of railroads which enabled them to get into the plant on the other side of the plant, west and north and east. We are on the south side.

Q. Would you say that that allowance was also granted at that industry in order to permit the Baltimore & Ohio to compete for the traffic?

A. No; I would not say that that situation developed. That allowance was made at a time when the Wabash and the former C. I. & W. or C. H. & D., its predecessor, got into the plant. Only the two railroads got in there. Our operating people, concluded, after a study we made ourselves, that it was of advantage to us economically to permit the Staley Company to do this work for our account.

P. 3329:

Q. Had you, up until that time, been performing the service?

A. Yes, sir. Originally both railroads served the Staley Manufacturing Company plant, the Wabash and the Baltimore & Ohio, or its predecessor, with their own engines. As the Staley plant grew in importance, changed conditions were involved, even within the plant. For example, one of the latest additions to it was a 3,000,000-bushel elevator from which they merchandised grain, in addition to the immense manufacturing plant that they have.

Q. I take it that the Wabash or none of the trunk lines get into the plant at the present time. That the plant performs its own service and that the same allowance was granted by all lines.

A. By all lines.

Q. And that the underlying proposition of granting that allowance was a matter of economy to the trunk lines.

A. Yes, sir.

Q. And that you were presented with the alternative of either performing the service yourself, or granting the allowance, and you considered the allowance to be less than what it would cost you to perform the service; is that correct?

304 A. Yes, sir; frankly I have heard our superintendent say or testify that if we undertook to perform the switching at the Staley Company plant we would have to put on another engine. It is well understood that operating officers are looking for economy in operation all the time.

Mr. GWYNN. That is all.

* * * * * *

P. 3740:

F. C. Furry, called as a witness, being first duly sworn, testified as follows:

Direct examination by Mr. SMITH:

Q. Will you give your name to the reporter?

A. F. C. Furry.

Q. You are general freight agent of the Northern Lines of the Illinois Central System; are you not?

A. Yes, sir.

Q. The Northern lines comprise the territory north of the Ohio River?

A. Yes, sir.

* * * * * *

P. 3754:

Q. Now, the next one, Mr. Furry, the A. E. Staley Manufacturing Company at Decatur, Illinois.

A. We first published an allowance to the Staley Manufacturing Company effective April 3, 1930, and prior to that time we had no connection serving the plant. The Illinois Central, Pennsylvania, and the Illinois Terminal jointly built the track to the Staley plant, and when the connection was completed we published the same terminal allowance as was then in effect by the Wabash and the Baltimore & Ohio.

By Mr. HAGERTY:

Q. That allowance then is merely impelled by competition with the other roads that made allowance before your company reached the plant?

A. Yes, sir.

* * * * * *

305 Mr. BURCHMORE. Will the reporter read that question please?

(Whereupon the question was read as above recorded.)

Mr. BURCHMORE. I understand the witness to say he built over to that plant in order to get some of the business?

P. 3755:

The WITNESS. We did.

By Dir. BARTEL:

Q. When you built the track to reach that plant did you have sort of a bargain about it?

A. I cannot answer that question.

Q. Is is not a fact that you built the joint track 1,800 feet in length to connect with the track of the Illinois Terminal, and then your line and the Pennsylvania secured trackage rights over the Illinois Terminal in order to reach the plant?

A. I guess you are correct as to that. I do not know the operating conditions.

Q. No certificate was ever granted by the Commission for the Pennsylvania or your line to operate by trackage rights over the Illinois Terminal, or to build a joint track that you did; that is true?

A. I cannot say.

By Mr. BURCHMORE:

Q. Do you know whether the Commission decided it was not necessary to have a certificate for trackage rights, and afterwards took back that principle of law?

A. No, sir.

By Dir. BARTEL:

Q. At the time this track was built the Commission had taken back that principle?

A. I do not know anything about it.

Q. This track was built last year?

A. 1930.

Q. Yes.

A. The track was built and the operating department told us when they would be ready to connect it, and we obtained short notice if I remember.

306 Q. Do you know whether or not the plant let you operate within the plant?

A. Whether they will?

Q. Yes; if you desire to.

A. I cannot say as to that. I would not think they would.

P. 3756:

Q. All right.

A. I have been down there several times, and I think the tracks are so complicated I should not think they would want anybody to operate over it. Probably perform the service much cheaper than the other lines or the road haul carriers. Furthermore, there would be five of them, and I do not think they would want five switching in there.

By Mr. BELSTERLING:

Q. What do you mean by complicated tracks? Regular rails, standard guage, engines can go over it.

A. Well, the carriers could operate over the tracks according to my understanding.

Q. They could operate over them?

A. Yes. But they have several different loading platforms, unloading platforms, and I think it would just interfere with the operations of the plant.

Q. You mean it would be expensive for five railroads to receive and deliver freight all at one time within that plant?

A. I would say so.

Mr. BELSTERLING. Yes.

By Dir. BARTEL:

Q. Do you think the plant would allow them to operate within the plant five railroads at one time?

A. I would not think so myself.

By Mr. GWYNN:

Q. Would it be more expensive if the trunk lines would work out a pooling arrangement as they have at some other plants?

A. I would not want to answer; I am not an operating man.

* * * * *

307 P. 3762:

J. W. HEVRON, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. SMITH:

Q. Give your name to the reporter.

A. J. W. Hevron.

Q. You are general superintendent of the Northern Lines; Illinois Central System?

A. Yes, sir.

Q. That is the lines located in the territory north of the Ohio River?

A. Includes all lines north of the Ohio River.

Mr. SMITH. Have you any questions?

By Dir. BARTEL:

Q. Mr. Hevron, are you familiar with the plant of the Staley Company on which the Illinois Central makes allowance?

A. Yes; in a way I am.

Q. Have you heard the testimony of the previous witness?

A. I did.

P. 3763:

Q. What is your understanding whether it would be possible for the carriers to physically operate within that plant; do spotting service?

A. Well, I would not say it would be impossible for them to do it; but on account of the lay of the ground and distance from our working yards, it would be rather expensive, and we have considerable interference in the various carriers trying to work the plant at the same time.

Mr. BELSTERLING. Off the record.

(Whereupon discussion was had outside the record.)

By Dir. BARTEL:

Q. Now, the traffic for the Staley Plant, you now place that where?

A. Traffic coming in over our line for the Staley plant is set out in our yards at Decatur; about two and a half miles, I would say, from the plant.

308 Q. In your yard or the Staley plant?

A. First set out from trains in our yard, then it is handled to and from the Staley receiving and delivery track by our yard engine over the joint track.

Q. About how far is this joint track of the Staley plant from your track? In other words, what is the distance where you take it from your yard to the Staley yard?

A. Well, we first leave our yard over what is known as Havanna District, running between Decatur and Champaign. I would say we go about three quarters of a mile where we branch off on to a connecting track or Y you might call it leading to the Illinois Terminal track. Then we use the Illinois Terminal's tracks for a considerable distance to another joint track about 1,800 or 2,000 feet long leading from the Illinois Terminal's tracks into the connecting track of the Staley plant.

Q. Now, is all this service necessary in order to reach the plant of the Staley Company, or do you also reach other plants through that arrangement?

A. Well, there is another plant located beyond the Staley Company; a structural steel plant which is served by engines of the Staley Company.

P. 3764:

Q. I mean the movement that you just described as necessary in order to get the traffic to the plant of the Staley Company.

A. To the plant of the Staley Company; yes, sir.

Q. Then how far is it from the interchange tracks of the Staley Company to points of unloading within the plant?

A. I would say approximately 2,500 or 3,000 feet.

By Mr. BURCHMORE:

Q. How far?

A. 2,500 or 3,000 feet, until you reach the unloading tracks. Of course, they may place them farther out on the tracks.

By Dir. BARTEL:

Q. Now, is there any physical way in which the Illinois Central can reach the Mississippi Valley Structural Steel Company?

A. Do you mean for us to deliver into that plant?

309 Q. No; reach them direct, with your own power, at the present time.

A. No, sir.

Q. The only way you can reach that plant is through the plant facilities of the Staley Company?

A. That is right.

Q. You not only make allowance to the Staley Company for spotting at the Staley Plant, but also for spotting at the structural steel plant?

A. My understanding is that the same allowance is made in both cases.

Q. Do you know whether the Staley plant would let you spot cars within the plant at the present time if you elected so to do?

A. I should doubt very much if they would want us to do it. They have their own engines; they are familiar with the operation of the plant and would much rather do the work themselves.

Dir. BARTEL. That confirms the testimony of the traffic man for Staley & Company in Finance Docket 8609.

P. 3765:

Mr. BURCHMORE. Were all the details of the plant given in that docket?

Dir. BARTEL. They were not.

Mr. BURCHMORE. The tracks were not shown?

Dir. BARTEL. The witness did not know how many tracks were there.

Mr. BELSTERLING. Do you think it is proper to state in this record that something confirms the testimony of what a witness

said in another record? I do not doubt there was, but I wonder if it is proper without having the other testimony here?

Dir. BARTEL. Then I will state for the record this:

Mr. T. C. Burwell, traffic manager of A. E. Staley & Company and the president of the Lake, Decatur & Eastern Railroad, filed Finance Application for authority to operate the tracks of the Staley Company as a common carrier, and this matter came up in connection with Finance Application in which certificate of convenience and necessity was requested.

310 I asked Mr. Burwell this question, I asked him: "And Rule 3-A cars are placed on interchange tracks for demurrage purpose only and no other purpose?

The WITNESS. "No; I do not think that is presumed to constitute delivery by reason of the fact that if handling was done into the plant there is a further allowance there made by the carriers that would perform that service if the Staley Company did not do it, but for the demurrage purpose they are considered delivered when placed on the interchange track."

Question by MYSELF. "Could the carriers do it?"

The WITNESS. "Make delivery?"

My answer. "Yes."

The WITNESSS. "That would be doubtful again, I would say. The plant is served by five lines. Whether they could do it in such manner or not would be doubtful in my opinion. With five engines operating into the plant, if they attempted to operate with five engines I do not know how satisfactory that service might be either to the carriers or to the industry."

Question by Mr. WALTER. "But so far as the physical operation of spotting is concerned, each one could perform it?"

P. 3766:

The WITNESS. "Yes; there is no reason why they could not."

Then a question by Mr. WALTER. "That is, there is no physical obstacle to moving the cars to the particular—to the proper places in the plant?"

The WITNESS. "No, sir; there is not."

Question by MYSELF. "Could they do it as conveniently as Staley & Company could?"

The WITNESS. "I would imagine if you had five engines in there that all of them would be on the spot most of the time."

Q. "What do you mean by that?"

The WITNESS. "I mean to say I do not think five engines could go in and operate at the same time over the same set of tracks."

Question by MYSELF. "Do you mean spotting them would have to be performed at your convenience?"

311 A. "No; not necessarily ours, but theirs. I mean for example, if the Baltimore and Ohio had an engine in

there, and the Baltimore & Ohio is switching some certain track, and the Illinois Central sends an engine in to switch from that same track that the Illinois Central has got to be on the spot until the Baltimore & Ohio gets through with its switching there."

Q. "It would interfere with your movement some?"

A. "It would; yes."

Q. "How many tracks do you have within the plant?"

A. "I don't know."

Q. "How many spots do you have within the plant?"

A. "I would estimate ten to fifteen. I may be wrong; that is a rough estimate."

Q. "Can you give us a better estimate?"

Mr. WALTER. "Can you not tell from looking at the map?"

The WITNESS. "I might be able to. I have nothing to do with operation in the yards here. I count eleven. I would say somewhere between ten and fifteen would be about right as an estimate."

P. 3767:

Mr. BELSTERLING. What was the witness' name; I did not get it?

Dir. BARTEL. Burwell. In this case you mean?

Mr. BELSTERLING. No, this witness.

The WITNESS. My name is Hevron.

Cross-examination by Mr. BELSTERING:

Q. Mr. Hevron, it has been testified in these hearings that in a case where the industries are served by two or more railroads, that for the interest of economy of operation the carriers will pool the power, or they leave one railroad do all of the work. Would it be feasible to have such operation as that at the Staley Plant? In other words, could you employ the power, or could all of these various railroads employ the power of one particular railroad to perform this spotting service the same as you employ power of the Staley Company?

A. It could be done, but I do not think it would be satisfactory.

312 Q. More satisfactory to employ the power of the Staley Company?

A. I think to let the Staley people do their own placing of their cars.

Q. Why is that?

A. Well, it is a very large plant. They operate from 12 to 15 tracks.

Q. And they do it at less than what it would cost the railroads to do it?

A. Their engine is there to do it when they want them, they know where the cars are to go, and personally I think it would be much more satisfactory to allow them to handle their traffic.

Q. Yes. And I presume that the Illinois Central stands ready and is willing to perform this service of placing the cars at the customary places of unloading in the event the Staley Company wanted you to do it?

A. If they wanted us to; yes.

P. 3768:

Q. And you have elected instead of doing the work yourself to employ the facilities of the industry, to which you make an allowance which is less than what you figure it would cost you to do the work; is that not true?

A. Yes. Up until about a year and a half ago we entered this plant through switching arrangement with the Wabash, I believe. We made no allowance at that time, but after we built into the plant we found the other railroads were making the allowance, and we made a similar allowance after investigating as to whether or not it was reasonable.

Q. Yes. After trying it out and figuring the cost you determined that this was the reasonable and economic thing to do.

A. Yes, sir.

Q. How many loads are handled daily at this Staley plant; do you know? That is, for all carriers?

A. Well, I do not know for all the railroads, but for our own railroad in the year 1930 we handled 4,649 loads in-bound, 3,074 loads out-bound. Or about 7,700 cars in and out, loads in and out, for the year 1930.

Q. And how many cars is that a day, about? About 20 cars, I think, roughly speaking?

A. About 25 or 30 cars.

313 Q. About 25 or 30 cars per day?

A. It varies of course; different seasons.

Q. Is it more expensive or less expensive to take 25 cars to one industry and place those cars for loading or unloading, or to take 25 cars and place each particular car at some private side track along the line of your road, what is commonly known as an ordinary side track, and drill them in and out one or two at a time, subject to interference of through freight and passenger service?

A. I do not believe I got the first part of your question. Will you repeat it?

Q. In other words, suppose you had 25 ordinary sidings which received and delivered 1 car a day, and those cars would have to

be peddled along your main line subject to the interference of through freight and passenger service? Isn't that service much more expensive than making a mass placement at these large industries?

P. 3769:

A. Yes; it would be if we had to peddle the cars at various sidings. It depends entirely upon the amount of work that would be required of us in placing these cars at the industry where you have a large tonnage.

Q. But generally speaking where you have a large tonnage at the larger plant by reason of the density of tonnage and the greater number of cars handled at a time, the unit cost of placement because of the fact that you can distribute the engine hour costs over greater tonnage or greater number of cars is usually less than at small industries; is that not true?

A. I think so.

Q. And assume all other elements are equal, and considering wholly the density of traffic and the larger number of tracks required to place those cars, these larger industries have no greater service than placing one or two cars on these smaller industrial tracks, based on the unit cost per car or per ton?

A. Providing you are not called upon to make too many switches in the plant.

Q. I assume you make just the one customary placement of the car for loading or unloading as established by general usage?

A. You are correct.

314 By Mr. HAGERTY:

Q. That may entail some drilling of the number of cars to get them on the spot for unloading, constituting the number of switches you spoke of?

A. That is what I mean. It depends on the number of switches you have to make in the plant. It is pretty hard to say here unless you know what the plant you are serving—the kind of plant you were serving as compared with a smaller industry. Each would have to be handled on its merits.

By Mr. BELSTERLING:

Q. You have to drill cars for ordinary siding, do you not, drill them in and out?

A. Ordinary siding usually——

P. 3770:

Q. You have to classify the cars into the siding.

A. Usually classified in the classification yard before they come out on the switching district.

By Dir. BARTEL:

Q. In making delivery at the Staley plant you also handle the cars to their interchange track for other carriers; do you not?

A. Yes. We have an arrangement now whereby we are handling the business of the Pennsylvania Railroad in and out of this plant.

Q. How about the Illinois Terminal?

A. I think the Illinois Terminal are now handling their own cars; I am not sure.

Q. Handle the Wabash cars?

A. No, sir.

Q. Where do you pick up the Pennsylvania cars that you handle into the plant?

A. We pick up the Pennsylvania cars in a common yard. Practically the same yard as we use for our yards in Decatur. The Pennsylvania have trackage rights over our line into Decatur in the south and north.

Q. So at least so far as the Pennsylvania is concerned, you at the present time have what might be termed pool service into the plant?

A. Yes, sir.

315 By Mr. GWYNN:

Q. You stated in answer to a question by Mr. Belsterling that the respondent elected to grant this allowance rather than to perform the service themselves. I mean in the Staley plant. Now, I understand from your previous testimony that you have not been given perimssion to go in there and perform that spotting. You doubt very much whether they would give you permission; is that correct?

A. I do not think we approached the Staley people and asked for permission to go in. I do not know whether they would give us permission or not.

P. 3771:

Q. So you really never made a choice between performing the service yourself or granting an allowance? You merely grant the allowance the same as the other trunk lines?

A. We did.

Mr. BURCHMORE. What is the answer?

Dir. BARTEL. Are there any further questions?

Mr. BELSTERLING. Granting of an allowance is presumptive.

Mr. BURCHMORE. I want to call attention to the fact that the witness answered the question, "We did."

By Mr. GWYNN:

Q. We did what?

A. We elected to grant an allowance rather than to do the switching ourselves.

Q. Did the plant ever ask you to perform the spotting service?

A. Not to my knowledge.

By Mr. GROOM:

Q. It is your obligation under the line-haul rate to perform switching service; is it not?

A. I presume so. I am not entirely familiar with that feature of it.

By Mr. GWYNN:

Q. If I understand the witness correctly, it is your opinion that as you said, you doubt very much if the plant would permit you to perform the switching if you wanted to; is that correct?

316 Mr. BURCHMORE. He said he did not know, two or three times.

The WITNESS. I stated we have never asked the plant. I could not answer directly until we had approached the plant as to whether or not we would be allowed to do the switching.

By Mr. GWYNN:

Q. Do you happen to know when this allowance was granted?

P. 3772:

Dir. BARTEL: He stated that, April, 1930.

By Mr. GWYNN:

Q. When did you reach the plant first over the tracks of the Wabash?

A. When did we first use the Wabash for switching into the plant?

Q. Yes.

A. I cannot answer that question.

Q. It was prior——

A. It was many years ago.

By Dir. BARTEL:

Q. In other words, merely deliver traffic to the Wabash——

A. Deliver traffic to the Wabash I presume at the time the plant was established.

By Mr. GWYNN:

Q. And the Wabash deliver the cars to the plant and the plant performed its own service at that time?

A. I do not know whether they were or not at that time.

By Dir. BARTEL:

Q. Up until you granted the allowance in 1930 when you used the Wabash in order to reach the plant; do you know whether or not the Wabash granted an allowance at that time to the Staley plant on a purely switch track?

A. I do not.

317 By Mr. HAGERTY:

Q. What was the matter with the arrangement under which the Wabash handled the traffic; the switching service to this plant; why did you discontinue that; was it working all right?

A. Fairly well, but I think we naturally wanted to get into the plant.

Q. Well, didn't you get into it over the Wabash rails?

A. Do you mean with our own power?

P. 3773:

Q. No; but through the switching service; you had to pay the Wabash a switching charge to get in and out of the plant?

A. We were getting into the plant through the Wabash on a switching charge.

Q. Wasn't that all right? What was the matter with it?

A. I do not know. I was not there at that particular time. I could not tell you.

Q. What you did in getting into the plant, instead of paying the Wabash you had to pay someone else. Did you pay someone else more or less than you paid the Wabash?

A. I do not know.

* * * * *

By Mr. HAGERTY:

Q. Do you happen to know what you did pay the Wabash in the way of switching charges to get into that plant at the time it was being served through the Wabash?

A. I do not know.

Mr. SMITH. I will put Mr. Furry back on the stand and I think he can answer.

P. 3774:

Mr. HAGERTY: Can he not answer from there?

Mr. FURRY. We paid the Wabash 13 cents a ton, minimum $2.70, maximum $4.95 per car, plus——

Mr. BURCHMORE. Or how much a year?

Mr. FURRY. Per diem reclaim. And the reason why we built into the track was because we figured we could save money by doing it.

318 Mr. HAGERTY. Are you saving money in the way of that terminal cost now under what you paid the Wabash?

Mr. FURRY. I could not say as to that now, but based on the tonnage we handled for a given number of years, it was analyzed, the cost of the track was figured out, our people decided we could make a considerable saving by constructing this track.

Mr. HAGERTY. That is, saving in the terminal cost of reaching the plant compared with what you paid to the Wabash?

Mr. FURRY. Yes, sir.

Mr. HAGERTY. That is the whole substance?

Mr. FURRY. Yes, sir.

Mr. HAGERTY. Hasn't anything to do with the nature of the traffic; you were getting the same volume anyway by the Wabash?

Mr. FURRY. I don't know whether we were or not.

Mr. HAGERTY. Was this matter of volume of traffic a factor in constructing that track in there?

Mr. FURRY. It was one of the considerations. Because when you serve a plant direct you naturally feel you are going to get more of their business than where you use some other line to handle the traffic for you.

Mr. HAGERTY. Your figures show you have more business than when you reached it through the Wabash?

Mr. FURRY. I could not say.

Mr. HAGERTY. You have not tested that out?

Mr. FURRY. No, sir.

Mr. HAGERTY. You thought you should get more business, though?

Mr. FURRY. Yes, sir.

Mr. BELSTERLING. This allowance to the Staley Company on their engine cost; the allowance you make to the Staley Manufacturing Company is based on the engine cost; nothing but the cost of operating the engine?

P. 3775:

The WITNESS. It is supposed to be based on actual cost of the service.

319 By Dir. BARTEL:

Q. Did you make a cost study there Mr. Hevron, or did you merely adopt what you found the other carriers were allowing.

A. We adopted what we found the other carriers were allowing.

By Mr. BELSTERLING:

Q. Does the record show what are the products of this plant, Mr. Hevron?

A. Products of the plant?
Q. Yes.
A. Well, it is corn produets.
Q. Corn products?
A. Corn, grain in-bound, starch, and all corn products.
Q. What are the products of the other plants served by this Staley Company for which you compensate them; do you know?
A. That is structural steel.
Q. Structural steel, fabricating shop?
A. I think so.
Q. For bridges and buildings?
A. I think mostly highway bridges.
Q. I beg your pardon?
A. Mostly highway bridges.
Q. Those two industries are not related in any way you know of?
A. I do not know.

By Mr. HAGERTY:

Q. Now, was it the operating department that conceived the idea of economy from the operating standpoint; from the standpoint of lessening the operating expense, or doing away with the arrangement of entering that plant over the Wabash and building a line in there connecting up in the manner you now serve it; was that an operating matter?

P. 3776:

A. I could not say it was entirely an operating matter. I presume the operating people were consulted at the time they decided to build the track into the plant.

320 Q. That is the operating people were consulted?
A. I presume so. I cannot say definitely.

Q. Well, do you know whether the idea had its origin with the operating department as a matter of economical practice, or did it have its origin with some other department of the railroad?
A. I do not know.
Q. You have charge of that particular division there?
A. I do now; yes, sir.
Q. Did you have jurisdiction at the time this matter was under consideration?
A. I don't think I did. I was on the Southern Lines at that time.

Mr. HAGERTY. Maybe the previous witness could answer. Do you happen to know whether this idea had its origin with the operating department or was it based on application by the plant?

Mr. FURRY. I really could not say. It was talked about some three, four, or five years before the track was ever constructed. I know our operating people talked about it, but where it originated I could not say.

Mr. BELSTERLING. It must have been decided on as a matter of policy submitted to your executives.

Mr. FURRY. Yes, sir.

Mr. BELSTERLING. What difference does it make whether the operating department or the traffic?

Mr. HAGERTY. Mr. Smith, I wonder if we can get that, if it is available?

Mr. SMITH. I understand you want to know who originated this proposition to build the tracks?

Mr. HAGERTY. Yes; I want to find out who conceived the idea that it would be more economical for the Illinois Central to change its plan of entering that plant. Especially whether it was based upon application of the plant to the traffic department, or whether a matter of economy originating with the operating department.

P. 3777:

Now, I understand this is really a matter of competition. If so, I would like to know. If it was not, let us have the facts in reference to it.

Mr. BURCHMORE. Mr. Examiner, it may save a little time if I make a statement. I think my name is on the brief as counsel in Finance Docket Case, Lake Decatur & Eastern, but I had nothing to do with the case. My partner, Mr. Walter, handled the case, but I happen to know—I know nothing of the
321 facts, except what have come out in this hearing about this plant, but I am in position to state that in October 1921 the Staley Company suggested the idea to Mr. C. C. Cameron, then traffic manager, or one of the chief traffic officers of the Illinois Central, that it would be an economical and desirable thing for the Illinois Central to build in there, and that was the initiation of the idea so far as our information goes.

I am perfectly willing to have it understood it did initiate with the traffic department, just like the Illinois Central builds many other lines.

* * * * *

Vol 7, p. 7134:

T. C. Burwell, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. HAGERTY:

Q. State your name, please.

A. T. C. Burwell.

Q. What is your relation to the Staley Manufacturing Company?

A. Vice President and Traffic Manager.

Q. How long have you occupied that position?

A. I have been associated with the Staley Company since 1917. I have been in charge of traffic since 1921; I have been Vice President for about seven or eight years.

Q. Does the Staley Manufacturing Company own the tracks within the industrial plant?

A. They own all tracks on ground owned by the Staley Manufacturing Company.

P. 7135:

Q. What is the aggregate mileage of those tracks?

A. Approximately 20 miles.

Q. Approximately 20 miles?

A. Yes; 20 miles.

Q. How many locations for loading and unloading carload freight are within the plant on those tracks?

A. Well, I would estimate somewhere between 10 and 15.

322 Q. For both in-bound and out-bound?

A. In-bound and out-bound. At first we have the elevator for unloading the grain, and then there are six spottings for manufactured products, which would be seven. Coal unloading would be eight; oil would be nine; feed loading ten; soybean loading would be eleven. I think that covers it. Anywhere between the range of ten to fifteen would cover the total for loading and unloading.

Q. Now, in volume during a normal period, what would be the number of carloads per day out-bound?

A. Out-bound?

Q. Yes.

A. Oh, it would run from thirty to forty out-bound cars per day.

Q. And in-bound?

A. Well, I might answer that question this way, I can give it to you on the annual basis, that the annual car handlings run from 30,000 to 36,000 cars. The in-bound, of course, varies because sometimes you are buying grain and sometimes you are not. Be about 3,000 cars a month if it came in evenly over a given period, in and out.

Q. What railroads have direct track connection with your tracks?

A. The Baltimore & Ohio, the Illinois Central, the Illinois Terminal, the Pennsylvania, and the Wabash.

Q. Did any of those railroads ever perform the spotting service at that plant? That is, placing of the cars?

A. Prior to May 1, 1922, the C., I. & W., which has been acquired by the Baltimore & Ohio and the Wabash, performed switching service within our plant.

Q. And at that time did the other lines reach the plant?

A. The Illinois Terminal, Illinois Central, and Pennsylvania did not reach the plants until April 18, 1930.

P. 7136:

Q. What brought about the change from performance of the service by the lines that served the plant, and performance of that service by the industry?

323 A. That was brought about in the fore part of 1922, the C., I. & W. officials, including their President, Mr. B. A. Worthington, and the Wabash had a conference, at which their operating vice president was present, and each of the roads had an engine inside the plant. There was some complaint about one engine getting in the other's way, and so forth, and out of that conference came the suggestion if it would or would not be possible for us to do our own switching. I think that originated with Mr. Worthington of the C., I. & W.

So contracts were entered into the later part of April, which were effective on May 1, 1922, and a cost study was made, I think at that time $1.57, and tariff was published providing for allowance not exceeding $1.57. I think that was the figure. I do not believe I have the tariff that goes back that far. But the tariff, however, was amended in 1924, following another cost study, to $1.65.

By Dir. BARTEL:

Q. Did you say this is instigated by Mr. Worthington?

A. That is my recollection that the suggestion—it was a conference on Mr. Worthington's car at Decatur, and I think the original suggestion as I recall it, that is 10 years ago—came from Mr. Worthington, then with the C., I. & W. They discontinued their switch-engine operation in the plant and the Wabash discontinued their switch engine at the same time.

Q. Was it not just the reverse of that Mr. Burwell, that the Wabash proposed the change of arrangement and Mr. Worthington objected?

A. I may be wrong. I say it is 10 years ago, but it came from one of the officials, either the Wabash or the C., I. & W. I thought it came from Mr. Worthington.

By Mr. HAGERTY:

(P. 7137:)

Q. Well, now, at that particular time was there any—did the interference that you speak of caused by the presence of the two engines at the plant affect the industrial operation in any way?

A. I do not think we had any complaint to register at that time, particularly. The complaint originated with the railroads that then were serving our plant with engines. That engine was a Staley engine for account of the C., I. & W. and the Wabash. They were both trying to spot cars at the same time, and the conference, as I recall, was called by the carriers. I do not recollect that we had any complaint as to any inconvenience at that time.

324 Q. Because of interfering with each other they finally entered into some arrangement under which the Manufacturing Company would perform its own service?

A. That is right.

Q. And be paid for it?

A. That is right.

Q. Now, did the industry apply for an allowance?

A. We did not have any motive power at that time at all. We went out following that conference and purchased motive power, and it was the understanding, and contracts were drawn up at that time immediately following the conference, to provide that we should do the work. Then tariffs were published in line with the contracts.

Q. Was there an allowance per car agreed upon that your industry was to receive then?

A. At that time?

Q. Yes.

A. Yes. It was $1.58 a car instead of $1.57.

Q. Now, when the other railroads made the connection with your tracks, did they just fall in line with the arrangement you had with the other lines, or was there some special arrangement in reference to the other lines?

A. They took a cost study covering the period from January 17th to January 31, 1930, which was the last cost study available at that time, and published their tariffs on that basis on a basis equal to the other roads. That cost study indicated a cost of $1.89. The roads, however, published $1.65 maximum which was in effect by the Baltimore & Ohio and the Wabash.

P. 7138:

Q. And apart from the service performed by your power for which the railroads pay you, and the interchange of traffic is

there any intraplant movements necessary in the industrial processes?

A. There are some intraplant services. There is also some what they call spot time and we are only paid on the basis of 61.04 percent of the total cost. We absorb 38.96 percent. That was the figure arrived at by Mr. Linegruber's committee at Cleveland representing the Central Freight Association lines.

Q. That so-called spot time means the delay to the engine when idle?

325 A. When it is waiting for orders, or whether blocked by some plant operation, or whether intraplant move, or anything that would not be directly chargeable to railroad operation.

By Dir. BARTEL:

Q. Mr. Burwell, do you have a map of your plant lay-out with you?

A. Yes, sir.

Q. Will you put it in the record?

A. Yes, sir.

Q. Mr. Burwell, you have no objection to this going in the record, I assume?

A. No.

Dir. BARTEL. It will be marked "Exhibit Number 3–C."

(The document was thereupon received in evidence and marked "Exhibit Number 3–C, Witness Burwell." It is forwarded herewith.)

By Dir. BARTEL:

Q. On this Exhibit Number 3–C, Mr. Burwell, just where does the Wabash deliver the cars to your company?

A. The top of the map there just below what is noted as center section 7 near the right hand. Thirty-second Street Section 7.

Q. Where does the Baltimore & Ohio deliver its traffic?

A. They deliver theirs at Jasper Street, the left side of the map.

P. 7139:

Q. And the Illinois Central and the Illinois Terminal and the Pennsylvania, in the yards?

A. They deliver theirs at Homewood Avenue or Brush College Road.

Q. That is in the yards shown just north of your manufacturing company elevator?

A. Well, I might elaborate on that and say they come under the Wabash at a point noted subway there on the Brush College Road. They bring those cars down and spot them on tracks north of the grain elevator between 26th and 32nd Street.

326 Q. On traffic delivered to you by the Wabash, do you get it at 32nd Street?

A. They put it on what is known as our track number 1. That is the first track south of the right of way line; connects directly with their connection at 32nd Street.

Q. Did you not at one time have to—have a connection at the other side of your plant that you received cars from the Wabash?

A. We formerly received cars down in the vicinity of Jasper Street from both the Wabash and the Baltimore & Ohio. Those connections are still there but are not used.

Q. That is they are not used for the Wabash but they are used for the Baltimore & Ohio?

A. For the Baltimore & Ohio, but not for account of the Wabash.

Q. Why did you discontinue that connection with the Wabash?

P. 7140:

A. By reason of the fact that when the engine went out to pick up cars on the Illinois Central and the Pennsylvania and the Illinois Terminal it was more convenient to interchange with the Wabash, and the further fact that when we used the west-end connection at Jasper Street we did not have the yards nor the elevator between 26th Street and 32nd Street; in the meantime the Wabash Railway Company sold to the Staley Company 13 acres of ground between Woodford Street and 22nd Street and rebuilt those yards or the Wabash yards at a point north of our elevator between 26th Street and 32nd Street. Their make-up yards formerly were between Woodford Street and 22nd. Now, their make-up yards are between 26th and 32nd Streets; make-up and break-up yards.

Q. What were those extensive yards built for on the Staley property?

A. Why were they built?

Q. Yes.

A. They were constructed at the time the grain elevator was built in 1926 or 1927, which has a capacity of three and a quarter million bushels.

Q. Those tracks were not built that soon, were they?

A. They were built about that time. That is north of the elevator. I think some were completed in the latter part of 1929 or early 1930.

327 Mr. BURCHMORE. Which tracks are you speaking of, Mr. Director?

Dir. BARTEL. The yard tracks.

Mr. BURCHMORE. The yard tracks of the Staley Company?

Dir. BARTEL. The Staley Company.

Mr. BURCHMORE. Or the yard tracks of the Wabash?

Dir. BARTEL. No; the Staley Company.

The WITNESS. These tracks on the east and from the elevator were stub end. Most tracks serving the elevator were built in 1926 or 1927. There was considerable fill in there; when these lines built into the Staley plant these tracks were extended on out as they are shown on the blueprint.

By Dir. BARTEL:

Q. The yard tracks on the blueprint are Staley yard tracks, are they not?

A. That is right.

Q. Weren't they built about the time that the Illinois Central, the Pennsylvania, and the Illinois Terminal built into your plant?

A. The east part of those yard tracks at the elevator were built at that time, but the other tracks serving the elevator were built at the time the elevator was built, but they were stub end on the east end.

Q. Weren't they enlarged primarily so as to be receiving tracks for the traffic coming in from those three railroads, the Illinois Central, the Pennsylvania, and the Illinois Terminal?

P. 7141:

A. Yes. I think they were enlarged to accommodate that interchange of the various lines, that is the Wabash, the Illinois Central, the Illinois Terminal, and the Pennsylvania Railroads.

Q. Now, at one time, Mr. Burwell, the Staley Company leased this entire track lay-out, did it not, to what is known as Lake Decatur & Eastern?

A. That is right.

Q. And the Lake Decatur & Eastern undertook to secure a certificate of convenience and necessity to operate as a common carrier?

A. That is right.

328 Q. Now, in that case, in that finance case in which that certificate was requested, you were a witness and testified?

A. That is right.

Q. Are you familiar with the record in this proceeding wherein I quoted from your testimony in that finance docket Number 8609 with regard—on page 5491 and 93 of the record—with regard to interference?

A. You quoted?

Q. Yes; I quoted your testimony.

Mr. BURCHMORE. May I show it to the witness?

Dir. BARTEL. Yes.

The WITNESS. I do not recall it, Mr. Director. Page 54 what?

By Dir. BARTEL:

Q. Page 5491 and 93 of the record.

A. What do you have specific reference to?

Q. I quoted into that record your testimony in Docket 8609.

A. You mean about the Rule 3-A?

Q. No; what I want to ask you, Mr. Burwell, is whether you have reason to change any of the testimony which was there referred to.

A. Reading it over hurriedly I would say that would stand; yes, sir.

By Mr. BURCHMORE:

Q. That is what you said in the other case?

A. Yes, if that is quoted correctly.

P. 7142:

By Dir. BARTEL:

Q. Yes; and if you are asked the same questions, you would answer the same way?

A. The same way; yes.

Q. Now, Mr. Burwell, on this allowance which you get from your trunk-line connections it also applies on traffic which you deliver for them to the Mississippi Valley Structural Steel, does it not?

A. That applies on traffic coming from or going to the Mississippi Valley Structural Steel; yes, sir.

Q. And would you handle traffic coming in from the Illinois Central, for example, to the Mississippi Valley Structural Steel, that traffic as I understand would be delivered to this interchange track called Moser Street?

329 A. Yes; be delivered on those tracks.

Q. If you can, trace the movements of your power over that in order to get to the Mississippi Valley Structural Steel?

A. We would handle that through the elevator yards to the point shown as 24th Street; and on the southbound track through to the west end of our property at Jasper Street subway, and bring it down east on the first track north of the Baltimore & Ohio right-of-way fence to a point between 18th Street and 19th Street noted as M. V. S. S. Company connection. At that point we would go on the tracks that are owned by the Mississippi Valley Structural Steel Company.

Q. Now, if the Illinois Central were to attempt to serve the plant of the Mississippi Valley direct, the only way they could do it would be through your property, would it not?

A. That is right.

Q. Would you permit them to do that if they so elected?

A. I am inclined to think we would not.

Q. And the same thing applies to the Pennsylvania and the Illinois Terminal?

A. That is right.

Q. Now, on traffic going to that Mississippi Valley Structural Steel——

P. 7143:

A. I might say this, Mr. Director, that if we had no allowance in our plant and the railroad engine was the only engine operating in our plant, we would permit these lines to go into the Mississippi Valley Structural Steel as we did at one time permit the Wabash to use our yards in going into the Mississippi Valley Structural Steel Company.

That was back prior to the entry of these other lines into our plant. Providing we did not have our own engine in there. If the railroads were doing all of the switching, we would not have any objection.

By Mr. STRASSER:

Q. Mr. Burwell, is it not a fact that the Wabash had retained an easement by the exercise of which it would have access to that plant?

A. The Wabash does have a perpetual easement across our property.

330 Q. Yes.

A. And if we should refuse to permit the Wabash to use our tracks to serve the Mississippi Valley Structural Steel Company, they could exercise their right and build a track.

By Dir. BARTELL:

Q. Where does that easement apply? From the left side or from the present interchange?

A. It applies from the Jasper Street entrance, and it would go right across the most of our track serving the heart of the plant.

Q. Which carrier serves the Mississippi Valley Company direct?

A. There is only one line today serving them direct. There is no line serving them direct today. We serve the Mississippi Valley Structural Steel Company for the account of all the lines.

Q. Did the Baltimore & Ohio not serve them direct at one time?

A. They did serve them direct at one time, and the Wabash served them direct at one time.

Q. That is the Wabash served them through easement they had through your property?

A. Yes.

P. 7144:

Q. But the Baltimore & Ohio served it direct, did they not?

By Mr. STRASSER:

Q. At that time the Wabash did have its own track, did it not?

A. There was a time when the Wabash had its own track; that is the reason you have the perpetual easement.

Q. That track was taken up in order to give you people the space you needed in there for your development, but in consideration of their taking up that track you granted them, or they reserved this perpetual easement so any time the service by your company was not satisfactory they could replace the track and serve the Mississippi Valley Structural Steel Company with their own power?

A. That is the history of the service prior to the granting of the perpetual easement.

331 By Dir. BARTEL:

Q. Didn't the Baltimore & Ohio at one time serve the Mississippi Valley Structural Steel Company direct the same as they served your company direct?

A. Prior to 1922 they served it direct the same as the Wabash.

Dir. BARTEL. That is all.

By Mr. HAGERTY:

Q. As a practical operating matter would it be possible for the trunk lines that serve your plant to perform spotting service within the plant, either individually or through a pool power arrangement?

A. I think the pooling of engine hours they could serve it equally as well as we are serving it today; at a greater cost though.

Q. Through pooling power?

A. By pooling power; yes, sir.

Q. Would there be any interference with your industrial operation if that were undertaken?

P. 7145:

A. None whatever. I do not think that five engines would come in there at one time without interfering with each other, but I

think if they pooled their engine hours so as not to get in each other's way, I think they could do it.

Q. Would it make any difference to the industry whether its own power performs that spotting service?

A. Not a bit.

Q. Or whether the railroads do it?

A. Not a bit. Be glad to have them do it tomorrow if they want to.

Q. Can you tell us something as to the requirements of the industry in the placing, for example, of the in-bound load at the particular locations for unloading, in point of the requirements as to certain commodities at certain locations at certain times?

A. Well, our in-bound commodities consist primarily of grain and coal. Now, at a point west of the what is known as the Staley viaduct there, under legend number 3 you will find grain elevator A. That grain elevator has a capacity of three-quarters of a million bushels of corn, and is used for manufacturing purposes. We have an elevator located between 26th and Moser Road holding three and three-quarter million bushels of grain. That elevator today has about a million bushels of wheat and three-quarters of a million bushels of oats, and those are handled only for merchandising purposes. We use in the manufacturing process only corn. Wheat and oats are handled in that elevator for merchandising purposes.

332 Now, our coal is spotted at the coal dock at approximately 19th Street, just slightly east of 19th Street. We have a very simple loading lay-out. On the map you find Number 20 building comes down to the Staley viaduct, and that is our starch house, where all laundry, food, and bag starch are packed, and we have sidings each side of that Number 20 building for starch loading.

Immediately west of Number 20 building is Number 16, what we call our thin boiling or modified starch building. Immediately west of that is building Number 17, and in building Number 17 we load corn syrup, glucose, corn sugar, and table syrup. Those buildings are on a line and the same track extended serves the three buildings. Those are our principal commodities.

P. 7146:

Now, at the northern part of the map, immediately west of the Staley viaduct, Number 12, legend Number 12, is the feed elevator. At that point we load our bulk and sack corn gluten feed, and on the stub track immediately north of that is the loading station for the corn oil. Legend Number 25, on the map between 19th Street and located approximately at 20th Street, is

the soya-bean track, at which we load soya-bean cake, soya-bean meal, and soya-bean oil.

By Dir. BARTEL:

Q. Isn't that legend on the left-hand corner self-explanatory?

A. I think it is; yes, sir. Of course, a lot of those points are not unloading points.

Dir. BARTEL. Yes.

By Mr. HAGERTY:

Q. As to the in-bound traffic that you described, each one of the individual lines serving the plant classify that traffic?

A. No, sir.

Q. In accordance with the commodity?

A. No, sir; we classify it ourselves.

Q. You perform that service yourself before the engine commences to distribute around the plant?

A. Yes; we do all that classifying out near the grain elevator, so far as the four lines are concerned. Of course, the Baltimore & Ohio traffic, that is classified at the west end of the yard.

Q. That service is included in the allowance?

A. Yes, sir.

333 Q. To what extent do you perform intraplant service in getting these materials from the storage elevators or bin over to the manufacturing plants?

A. Well, from this elevator here [indicating], there is no service at all.

Q. Which elevator do you mean; identify it on the exhibit.

P. 7147:

A. Legend Number 3. That is the elevator I spoke of that has three-quarters of a million bushel capacity and is used exclusively for the storage of grain to be used in manufacturing purposes. That takes care of a 30-day supply. We do transfer at times—for instance, if we should run out of corn in this elevator and there is no corn particularly moving on account of farmer harvest, we might transfer corn from this elevator over to the plant and that is part of the so-called intraplant switching which constituted 36.72 percent of the total.

Q. The grain that you stated was held for manufacturing purposes, where does the manufacture take place in the plant?

A. Right in the vicinity of the elevator. The elevator is in the heart——

Q. No movement required?

A. Not from that elevator.

Q. How many engines do you keep operating in that plant?

A. We have four engines. At the present time we are operating three engines on eight-hour shifts.

Q. Usually takes four engines to do the work?

A. There are times we use two engines in the daytime if there is heavy movement of in-bound grain. Take wheat, it moves in a very, very short period of time. It might be at a time like that we would use an engine at the elevator for grain unloading and another engine to bring materials into the plant and products out. And at the present time we are operating three engines on an eight-hour basis.

Q. Do I understand you to say the time of those engines is divided between interchange and plant service on a certain percentage basis?

A. The time of the engines?

Q. Yes.

A. For the actual cost, the cost is divided on the basis of 61.04 for the carriers and 38.96, and that is the figure arrived at by Mr. Linegruber and his committee. I presume that figure is on basis of the time. To get 38.96 percent they took into consideration intraplant movement.

334 Q. Have you for the industry undertaken to determine the amount of time devoted to the intraplant as compared to the total time consumed by the engine?

P. 7148:

A. Well, I do not know as we have, except we cooperate with these fellows that the Central Freight Association lines put in there. They had been in there representing the various lines, and they rode the engines day and night for ten days. And they had these cards where they kept track of every minute of the time. And subsequent to that the accountants took those cards and figured out the percentage. We cooperated with them at that time, but we did not actually make the study.

Q. Some testimony already of record in reference to the operation at your plant, testimony by the railroad officials, some of whom expressed the opinion that even though pool power was used at your plant——

A. Even though what?

Q. Even though pool power, that if the carriers undertook to do it, it would interfere with the industrial processes. I want to get your opinion as to that.

A. I do not know who testified to that effect, but I do not concur in the testimony.

Mr. BURCHMORE. Would you point out who testified to that effect, Mr. Hagerty?

Mr. HAGERTY. I think I can.

Mr. BURCHMORE. I understood several did not know, when you asked, at all. I want to know who said that was so.

Dir. BARTEL. Page 54——

Mr. HAGERTY. J. W. Hevron, General Superintendent of the Northern Lines, Page 5493 and 5 of the record. That witness stated that he did not think it would be satisfactory for the railroad to perform the service, even if they pooled the power.

Mr. BURCHMORE. Yes; because he said their five locomotives would be interfering with the others, didn't he?

Mr. HAGERTY. He said it would interfere with the business of the industry.

The WITNESS. There isn't any reason, Mr. Hagerty, why the railroads could not do exactly the same thing we are doing now if they pooled their engine hours, but they could not do it if they had five separate engines in the plant. That is, not satisfactory to themselves or anybody else.

335 P. 7149:

By Mr. HAGERTY:

Q. Taking your in-bound materials for example, does that move in a volume that will enable you to properly handle those cars from the interchange track and set them at the elevator or your unloading points, or in your processes of spotting do you go out to the interchange track and take just such cars as the industry requires at that particular time and place them?

A. When we go out there we usually have loads to take out and we take those loads out, and we take and classify all in-bound commodities, and if it is other than grain going into the large elevator east, it is brought down to the west end of the yard and switched into the plant from the west end. All of the switching into the plant itself is done from the west end; the switch from the west to the east.

Q. When one of your engines goes to the interchange track connecting with the Wabash to find some cars there, would it clean the track?

A. Yes.

Q. Each time?

A. Yes.

Q. Without shifting around to find individual cars and placing them in accordance with the requirements of the industry?

A. Well, as I said a while ago, our in-bound commodities, a very large volume is grain. That is our only raw material, the grain. And the next largest in-bound is coal. And we have, of course, miscellaneous cars of bags or cans, and invariably a car of bags would be spotted at Number 20 building, and that car

would probably be subsequently be loaded with product. And the car would subsequently be loaded with syrup if it was a suitable car for syrup loading.

Q. Now, regardless of who performed the spotting service at that plant, does your company still need a system of industrial tracks for its own industrial purposes?

A. We need a system of tracks whether industrially owned or railroad owned. We would have to have tracks, if that is your question.

Q. Apart from the interchange service; apart from the service of delivering cars to the railroad and receiving cars from them, your industry there would need a system of tracks?

336 P. 7150:

A. We have always pursued this policy that any tracks that were necessary on the ground owned by our company, we would build the tracks. And the railroads, prior to 1922, in spotting our plant used our tracks. Practically all of them were Staley owned. Everything on Staley ground is Staley owned in so far as the tracks are concerned.

Q. But you would need those tracks independently of who performed the service?

A. I do not see how you could get along without them.

By Mr. BURCHMORE:

Q. You need them for industrial purposes is the question.

A. Well, it is according to what you consider industrial purposes. For handling carloads of freight in, and handling carloads of freight out, that is what I meant.

By Mr. HAGERTY:

Q. You would need them for purposes of shifting your materials?

A. No. If we did not have any carloads coming in and out we would not need the tracks.

Q. You would use some other means of transferring the materials?

A. We transfer quite a few materials around now from place to place with Ford trucks.

By Mr. BURCHMORE:

Q. Do you use conveyors?

A. We have conveyors. We blow—for instance, starch is blown around over the plant, and feed is blown around over the plant.

By Mr. HAGERTY:

Q. If the railroads undertook to perform that service, would it have to be done under the direction of the plant yardmaster?

A. Have to be done in cooperation. There would have to be cooperation there, of course.

P. 7151:

Q. That is to say, the railroad crew would have to work under the direction of the plant spotting cars in accordance with the plant's desires and at the time desired?

337 A. Well, they would have to have some cooperation in there, because you have to have so many empties at a certain time at a certain building. Have to have coal spotted at the coal dock.

Q. It would never do for the railroads to run down from this base yard with a switch engine with a string of cars for your company, and with an uninterrupted movement slip into the plant and undertake to spot those to different locations?

A. It might work, but it would not be very satisfactory.

Q. It would not be the same service you are performing for yourself?

A. It would not be the same; no, sir.

Q. As as practical matter, in order to serve your plant in the way that you require it to be served, it is necessary to set those cars out somewhere before they are spotted and again pick them up for spotting purposes?

A. Unless they were classified out in the railroad yards. If the railroad classified them—for instance, the railroad could classify their cars and call up some of our operating people and say we are coming in with a cut of cars, as they did in the old days, what do you want spotted first? Go to the corn elevator first and the coal last. That is the way we did do it, and we could revert back to the same basis again.

Mr. HAGERTY. That is all.

By Mr. BURCHMORE:

Q. Mr. BURWELL, these questions of Mr. Hagerty about service without cooperation or convenience. As a patron of the various railroads entering Decatur, do you find that those railroads endeavor to cooperate with you and give you good service?

A. We find all of the railroads cooperating one hundred percent.

P. 7152:

Q. In considering whether to ship and receive goods by railroad instead of by truck, do you ever consider the question of service?

A. Well, yes. Service always enters into it, service and the cost of transportation.

Q. Do you believe from any point of view it would be reasonable service for the railroads to just sneak in there and shove

cars around at any time they happened to get there without regard to your necessities?

338 A. Well, our experience has been with Decatur lines that they are very desirous of cooperating; and if the railroads decided to pool their engines and serve our plant, I am positive that working with our operating people they would, as they did in the old days, call them and say they are coming in with a cut of cars. What do you want spotted first?

Q. Take your present situation: You are today performing final placement of your cars in-bound, are you not?

A. That is right.

Q. Now, when these roads, the Baltimore & Ohio, and the Illinois Central and the Pennsylvania, bring in a collection of cars consigned to you and leave them on some interchange track, are those cars arranged in any logical manner according to commodities or their ultimate point of placement?

A. They are not. The Illinois Central, as an example, actually handle into our plant all of the cars for the account of the Illinois Central, the Illinois Terminal, and the Pennsylvania Railroads. They switch those cars in their yard merely for the purpose of getting them together, no attempt to classify. And all of that classification is done after delivery on the interchange tracks.

Q. Now, Mr. Hevron stated, as I recall his testimony, Page 5490, that they had some 25 or 30 cars a day for you ordinarily. Is that about right?

A. Well, they probably average that many, maybe a little more.

Q. Now, when they bring in 25 or 30 cars or whatever number comes in at a time, are they all mixed up, grain and coal and boxes and cans in the same cut?

A. They are.

P. 7153:

Q. What, if any, classification service has to be performed before those cars finally reach the points where they are unloaded?

A. Well, all of the classification service that is ordinarily done by the carrier itself is performed by the Staley Company for the account of the carrier.

Q. Now, what do you do with those cars? The cars of grain, for instance; what do you do with those cars of grain?

A. All grain in-bound is subject to Federal inspection. And it is according to the grade of the grain in the car as to whether it will be used for manufacturing purposes or whether that grain will be used for merchandising purposes.

339 And our yardmaster is given a list of the cars, and so far as grain is concerned switches out those to go to

elevator A for manufacturing purposes and those to go to elevator C for merchandising purposes.

Q. Well, supposing these two elevators of yours, instead of both being owned by Staley & Company, were owned by two different grain companies. Would the railroads have to place them, place the cars at those two elevators?

A. They would.

Q. To do so would they have to perform the classification service?

A. They would have to perform some classification service, the same classification service that we now perform for their account.

Q. Do you, on these in-bound cars of grain, receive from the carriers any different service than is received on any ordinary—by any ordinary grain elevator?

A. We do not.

Q. On their lines?

A. We do not.

Q. And does the allowance that you receive on those cars pay for any service other than that?

A. It does not.

Q. Are there any other grain elevators at Decatur?

A. Several.

Q. Do the railroads actually deliver cars to those elevators?

A. They do to all the other elevators.

P. 7154:

Q. Do you happen to know whether they do that by making only one switch or one delivery per day at a particular elevator?

A. So far as the Decatur Milling Company is concerned, they are located in the western part of the city, served exclusively by the Wabash. They have a very limited trackage. I was associated with the Wabash Company for nine or ten years, and I do know that they always have had considerable difficulty about getting switched out there. They require a goodly number of switches per day.

Q. Is that because the volume of receipts and the number of cars per day is in excess of the track room?

A. That is right.

340 Q. Does that company have any power of its own?

A. They do not.

Q. Does the railroad, in your observation, try to reasonably meet the convenience of that consignee in its place?

A. They try, but they are usually more or less unsuccessful.

Q. Now, take your out-bound shipments. Take the in-bound shipments. Do you perform—do you receive any service, or are

you paid for any service on your in-bound coal that gives you a difference or greater result than an ordinary coal dealer obtains in Decatur namely, the placement of the coal at the point where it can be unloaded?

A. No; and I might say that we burn, according to our operations, from 700 to 1,000 tons of coal a day, and we can bring in that coal and spot it, in my estimation, at considerably less cost than the railroad could spot 20 different retail dealers.

Q. Do the retail dealers at Decatur receive coal by railroad?

A. Yes, sir.

Q. Do the railroads make a practice of simply pushing the cars in there and let them come to rest, or do they place anthracite at one place and the different types of bituminous at other particular spots?

P. 7155:

A. Well, the coal yard usually has ten or twelve different bins for different grades of coal, and they require certain cars spotted at different bins; anthracite at one, West Kentucky at another, East Kentucky at another, Indiana at another, and Southern and Central Illinois and so forth.

Q. Is that done by the Railroads with their own power?

A. That is done by the railroads with their own power after consulting with the retail dealer as to what point he needs the coal spotted.

Q. Now, your out-bound loads. Do you order particular cars by size and description for particular consignments of glucose, or starch, or other material?

A. We have certain classifications of cars and these cars are classified by the car inspectors in the outside yard. And that serves as a guide to our yardmen for spotting them for loading.

341 Q. If you are operating so-called ordinary simple side track industry would it be the practice of the carriers as you know that practice, to give you 50-foot furniture car if you wanted such a car, in lieu of a 40-foot car or some other type, and perform any switching service necessary to give you that car?

A. That is right. If the industry wanted a car they would get it, regardless of the amount of switching required.

Q. Are the tracks on which you load your out-bound shipments complicated tracks with many cross-overs, curves, and interference, or are they simple, straight leads, or what is their character?

A. Our tracks are very simple. Particularly where the bulk of our loading is done. That is at buildings designated on the map as 20, 16, and 17, which take care of the great bulk of our

loadings, and they are straight tracks, nothing complicated about them.

Q. Are they longer than is necessary to take care of the large number of cars that you load?

A. Are they what?

Q. Is the length of these tracks related to the number of cars you ship, or are they long for some other reason?

P. 7156:

A. They are related to the number of cars we ship. I might cite you to a situation at Decatur where the Wabash, west of its passenger station serves a goodly number of small industries for about four blocks and they have many, many complications that I know of in there where they might be spotting cars at the National Grocery Company and want to go in and spot a car for Metzler they discommode the National Grocery Company. There is no such complicated arrangement in so far as switching our buildings are concerned. The have been laid out with a view to simple railroad operation.

Q. Do the railroads, in your observation, try to meet the convenience of those other companies?

A. They do, but if you have a man that has a car of lettuce, and another, car of sugar, and he is unloading the sugar, and the man wants his lettuce, you have to discommode one to get the other in there.

Q. Even though it were spinach, the result would be the same?

A. The result would be the same, even though spinach.

Q. What are your principal competitors in your line of business?

342 A. Corn Products Refining Company; American Maize Products Company; Clinton Corn & Sugar Refining Company; Penick & Ford; Hubinger Company; Union Starch & Refining Company, and the Anheuser-Busch.

Q. Do these several companies have plants in Illinois, Iowa, and Indiana?

A. That covers—and Missouri.

Q. Do you happen to know whether each of them has extensive trackage at their plants?

A. Their track layouts are somewhat similar to ours I think

Q. Are they companies with a large volume of in-bound and out-bound freight?

A. Some of them more, and some of them less.

Q. Do you have any complaint to voice against any services or arrangements which they enjoy with the railroads with regard to their terminal operations?

A. I have none.

Q. Have they voiced any complaints against you so far as you have learned?

A. Not to my knowledge.

Q. Would you know if they had complained?

A. Probably would.

P. 7157:

Q. You do know of occasions where they have complained against your rates?

A. Freight rates; yes, sir.

Mr. BURCHMORE. That is all.

By Mr. HAGERTY:

Q. Do you have any scales in the plant, track scales?

A. Yes; we have a track scale. It is located between 17th and 18th Streets.

Q. Do you weigh most of your in-bound loads on those scales?

A. Coal. Corn is weighed in the hopper scales at the elevator.

Q. Coal?

A. As a rule that would be the only in-bound commodity.

343 Q. How about the out-bound, do you weigh some of that?

A. We weigh the bulk feed only. All of our shipments in packages are shipped under agreement with the Western and Central Weighing Bureau.

Q. Do you do that for invoicing purposes?

A. Billing and also invoicing.

Q. And coal, you do that for invoice purposes?

A. On coal, freight is settled on basis of our weight. The railroad does not issue their bills until they receive our weight on the in-bound coal.

Q. Do you settle the purchase price on that weight?

A. Settle the freight and purchase price. That is due to the fact some points from which we buy coal there are no track scales and it has been the custom over a period of years to settle both the freight and the invoice on the receiver's weights of coal.

By Dir. BARTEL:

Q. Mr. Burwell, I think you said the Illinois Central brought the traffic into your yard for the three carriers, that is, the Illinois Terminal, the Pennsylvania, and the Illinois Central.

A. That is right.

Q. Where does the Pennsylvania and the Illinois Terminal deliver traffic to the Illinois Central, do you know?

P. 7158:

A. Why the Illinois Central and the Pennsylvania use the same yard in Decatur. That is the Pennsylvania is a tenant of the

Illinois Central. And they use a joint yard and that is enroute out to our connection. They stop and pick up cars from the Illinois Terminal.

Q. How far is this joint yard of the Illinois Central and the Pennsylvania from your plant?

A. I think they have a witness here that might testify. I would estimate it to be around three miles. I do not know whether that is correct or not.

By Mr. BURCHMORE:

Q. By the route of movement?

A. By the route of movement from the yard where they start their engines to the elevator there I would estimate to be around three miles. They may have some witness here.

344 By Dir. BARTEL:

Q. Then in order to get to your plant they have to operate, do they not, over the Illinois Terminal under trackage rights?

A. Under trackage right for a little more or less than a mile.

Q. And then there is additional joint track they operate over to get to your plant?

A. There is joint track that is owned there by the Illinois Central, the Illinois Terminal and the Pennsylvania.

Q. After they get to the end of the joint track how far over your track do they operate before they deliver the cars to you?

A. I would estimate it to be a quarter of a mile.

Q. And if they were required to set cars at—spot cars at your various points of loading and unloading it would be how much additional?

A. Probably a mile.

Q. Now, Mr. Burwell, do you also get allowance in addition to the spotting allowance for less than carload traffic?

A. We do from the Illinois Terminal Railroad.

Q. What is that for?

A. That is in lieu of trap car service.

P. 7159:

Q. What is that minimum on your drayage allowance?

A. Six thousand pounds.

Q. What is your minimum on your trap car?

A. I think that is six thousand.

Q. Are you sure about that?

A. Well, I haven't—the Wabash tariff says six thousand. I do not know what the—I do not have the Illinois Terminal tariff. I think their man is here, but the drayage allowance is six thousand pounds.

Q. Wasn't the Wabash trap car ten thousand pounds for a long time?

A. It was.

345 Q. Wasn't it reduced to six thousand pounds in order to meet the drayage allowed by the Illinois Terminal?

A. No; it was reduced to the Illinois Central as I recall it.

Q. Wasn't it to be reduced and either the Illinois Central—wasn't the minimum on your trap cars reduced to six thousand in order to meet your drayage on six thousand?

A. Well, I do not recall. That was reduced sometime in 1930, and shortly after that reduction we did load considerable trap cars by the Illinois Central. At the present time we are not loading any trap cars.

Q. Why do you prefer to dray instead of having trap car service?

A. We save about 24 hours by draying it rather than handling it in trap cars. If we started it out, a load at Decatur, with the trap car it went to the freight house and the—the following day and left Decatur the following day. That allowance, Mr. Director, is in connection with the Illinois Terminal Railroad, and it was published for the reason that the haul to their freight house from our plant is, I think, about twice as far as the Illinois Central or the Baltimore & Ohio.

Q. It has been my understanding, Mr. Burwell—if I am wrong you can correct me—that the trap car minimum on all of these lines was ten thousand pounds. However, the drayage allowance in lieu of trap car was six thousand pounds although their trap car minimum was ten thousand, is that true?

P. 7160:

A. Well, I do not recall exactly, Mr. Director. I did not know that that particular thing was coming up and I do not recall the details on it at this time.

Dir. BARTEL. We will ask the Illinois Terminal about it. Are there any other questions?

By Mr. STRASSER:

Q. Mr. Burwell, even though the carriers pooled their switching facilities and service and undertook to spot your cars, would that be—could you have as satisfactory service as you can get by performing the service and receiving the allowance?

A. I think with the cooperation from the railroads it would give us practically the same service.

Q. Do you employ very many—a great number of men around your plants and yards?

A. About 1100.

346 Q. 1,100?

A. Yes.

Q. A good number of those are engaged at various times in loading and unloading cars?

A. That is right.

Q. Viewed from the standpoint of safety, which method do you think would be more satisfactory, the present arrangement or individual service by the carriers doing their own spotting service, or pooling?

A. Well, we have been operating for about twenty years at Decatur, ten years which the railroads did the service and ten years which we have been doing it. And during that time I think we have only had the loss of life of one man and that was by our own engine at the coal dock during the night. A fellow slipped and fell under the car. So with the usual precaution that the railroad would use I do not know as it would make much difference.

Q. Well, it merely occurred to me you might be better able to coordinate your switching service and your loading and unloading of cars to afford greater safety to your men if you did the service yourselves, than that which would be done by the railroad companies coming into your yard and undertaking to perform the service.

P. 7161:

A. There might be some added element of safety there.

Q. Now, Mr. Burwell, you use trucking service to some extent; do you not?

A. That is right.

Q. If as a result of this investigation it should be determined that the allowance—any terminal allowance to you such as you enjoy or the performance of any spotting service by the carriers themselves should be discontinued, would that have a tendency to make the trucking of freight more attractive to you?

A. You mean if the railroad did not bring cars into our plant; is that your thought, and spot them?

Q. Yes.

A. Yes; it would. If they did not make an allowance and did not bring cars in themselves, it would make trucks that much more attractive.

Q. And it would make it that much more difficult for the carriers to compete with the truck companies?

A. Yes, sir.

347 Q. Is there any objection to the pooling of the switching service and facilities of the cars and rendering you service by that method from a traffic standpoint?

A. Not that I know of from a traffic standpoint. There would be some additional cost if you did the service in there.

Q. Well, if the services were pooled it would necessarily have to be supervised. The service would have to be supervised by one of the companies, it could not be supervised by all of them, could it?

A. You would have to have a supervisor in there. He might mean more—he might lean more toward one railroad than he did to the other to influence traffic; is that what you mean?

Q. If you—have you had any experience as to whether there is any jealousy among carriers when there is that kind of a service?

A. I do not know as I ever worked where they had pool service.

Mr. STRASSER. That is all.

P. 7162:

By Dir. BARTEL:

Q. Mr. BURWELL, why is it that the Illinois Terminal grants you a greater allowance than the other carriers?

Mr. BURCHMORE. A greater allowance?

The WITNESS. I do not know. At the time they filed their tariff—maybe their witness might be able to tell you. The actual cost for that period from January 17th to January 31, 1930, was $1.89. As I understand they filed a tariff on basis of $1.65, and the Commission returned that tariff. I do not know just the details. Their traffic man may be able to tell you. They were told to issue the tariff on basis of the cost study figures filed with the tariff. I do not know just what the details were.

Q. But as I understand it, the Illinois Central power picks up the Pennsylvania cars, the Illinois Central cars in the Illinois Central yard and just moves on to the Illinois Terminal yard and picks up the Illinois Terminal cars and moves them down and spots them at your plant.

A. That is right.

Q. The cars they pick up for the Illinois Terminal, the Illinois Terminal pays $1.89 and the others $1.65. I wonder what the reason for that was.

348 A. As I understand the first tariff was $1.65 and the Commission returned and said it should be $1.89 reflected in the tariff because of the study submitted with the tariff.

I would like to put in at this time—I can do it in about two minutes—that is the wage scale. Would you be interested in our wage scale?

Mr. HAGERTY. The wage scale?

The WITNESS. I will put that in as a matter of information. Our engineers are paid 60 cents an hour, the firemen 50 cents, the switchmen 50 cents, and the engine foreman 55 cents. There is no overtime wage scale. Just a flat basis.

By Mr. HAGERTY:

Q. That is an important factor that enables the industry to perform the service at a less cost than if the railroad performs it?

P. 7163:

A. That was one of the guiding things in 1922 that permitted us to do this. When we put in the two engines at that time, the C. I. & W. discontinued what was known as the Staley engine, and the Wabash discontinued. And they were paying the standard rates.

By Mr. STRASSER:

Q. In operating your engines state how they are manned, the number of men?

A. They are operated with five men, an engineer, fireman, three switchmen, one of whom is the engine foreman.

Q. And do you have an extra helper there such as the railroads would have under the circumstances?

A. Well, they have three men, one of whom is an engine foreman. Total of five men per engine.

Dir. BARTEL. We will recess until two o'clock.

(Witness excused.)

(Whereupon, at 1:00 o'clock P. M., September 21st, 1932, an adpournment was taken until 2:00 o'clock P. M. the same day.)

349 (After recess—2 o'clock P. M.)

Dir. BARTEL. You may proceed, gentlemen.

Mr. HAGERTY. Can we have the operating officer of the Wabash Railway, in connection with the Staley Manufacturing Company plant?

A. E. STALEY MANUFACTURING COMPANY, DECATUR, ILLINOIS.—WABASH RAILROAD

C. F. JEWELL, recalled as a witness, having been previously sworn, testified as follows:

P. 7164:

Direct examination by Mr. HAGERTY:

Q. Are you familiar with the terminal operations at the Staley Manufacturing Company's plant?

A. Yes, sir.

Q. Was that under your jurisdiction at the time that the Wabash performed the service?

A. No; that was before my time.

Q. In your time none of the connecting trunk lines performed the service on the industrial plant track, did they?

A. Well, not since I have been directly connected with that line of work; no, sir.

Q. Well, have you had occasion to inquire whether it would be more economical for your company to perform the service on those tracks, than to have the industry perform the service itself, and be paid for it?

A. Well, my private opinion is that it is more economical for all of the carriers, under present conditions, to have the industry perform the service on a proper allowance basis, for this reason: I assume that the Staley Manufacturing Company would desire to continue to perform their own intraplant switching with their own engines. The other carriers interested probably would desire to do their own switching in there, and you would have the engines of two or three of the carriers, and the plant engines, all working in the same district, and I very much doubt if you would get an economical operation. Another thing: The Staley Manufacturing Company pays very much under the standard
350 rates for their entire crew. They have no penalty for overtime; if they work an engine for 10 hours, they pay them 10 hours at the standard rates, whereas, with us, after the eighth hour, we go into time and one-half. It is a considerable distance from the round house of the Wabash to the Staley plant, and the time consumed by the engine in going over there would be lost time, and the crew would have to be knocked off 20 to 25 minutes earlier than their quitting time, to get them back to the round house without overtime. The Staley Company has three switch engines working continuously right now, and I do not see where the carriers could get along with less engines than the Staley Company. You would have, unless some one road performed the switching for all, each of the roads having to keep an engine on duty right there, ready to make any move that they might be called upon to make. So that, taking it all in all, I believe that the operation on an allowance is much more economical to the carriers than an operation of their own would be.

P. 7165:

Q. Well, have you had occasion to study the actual results of the operation by the industry, to determine?

A. Oh, yes; I have been in and around the Staley plant a good many times.

Q. And your statement is based upon that study?

A. Personal observation.

Q. And if one engine of the carriers, that is operating jointly for all of the roads that serve the industry, were performing that service, do I understand from your statement that that engine would have to lie around at the industry subject to——

A. Well, in order to give them——

(Continuing.)

Q. Subject to the orders of the industry?

A. In order to give them anything like the service that they have now, it certainly would be necessary to keep an engine within that plant all the time, because of the distance that they have got to travel, to get in there.

Q. And that is one of the reasons, is it, why the operating cost to the carriers would be considerably more?

A. You would have considerable dead time in there, and then you have got the added wage expense.

Q. Well, if——

351 (Continuing.)

A. It costs about $30 per day in crew costs for a carrier to operate a switch engine eight hours.

By Dir. BARTEL:

Q. $30?

A. $30.

P. 7166:

By Mr. HAGERTY:

Q. You mean per hour, instead of per day?

A. No; crew cost per day is about $30.

Q. Crew cost?

A. Yes, sir. That is just the crew cost.

Q. I see.

A. Now then, you take the Staley cost, and it is very much under that.

Q. Now, on the point, or the question of interference with the individual processes: have you had occasion to inquire into that question?

A. Well, Staley——

Q. I refer to that particular plant.

A. The Staley engine is moving around through that yard all the time, and there certainly would be more or less interference. If one carrier performed the entire service, you would have less interference than if all of the carriers insisted on doing their own.

Q. But there would be interference?

A. Oh, yes; indeed.

Q. And what would be the nature of that interference, from your observation and study?

A. Well, it is a perfectly clear layout. It would be just simply an engine waiting for the other fellow to get out of the way.

Q. There would be no possibility of arranging a schedule of time under which those distinct operations could be conducted, without interference?

A. I very much doubt it, in a plant of that size.

352 Q. Did you have anything to do with the submission of this question of an allowance to the Staley Company, to the Terminal Allowance Committee?

A. Well, no; not in the submission of the study to the Allowance Committee. I designated the man on the Wabash who would ride one of the engines, and I was in and around Decatur a couple of times while the cost study was being made. But the Accounting Committee developed the figures, and they submitted them to the Central Freight Association Committee.

Q. And this man who rode the engine, who was designated by you——

P. 7167:

A. Yes, sir.

(Continuing.)

Q. Did he inquire into this question of interference, or possible or probable interference?

A. He had no reason to.

Q. What?

A. He had no reason to. He was simply put in there to ride that engine, and see what it did every hour that he was on duty.

Q. That is, the time that was consumed by the engine——

A. In performing each particular class of work.

Q. Throughout the whole study?

A. Yes, sir.

Q. And classifying that work?

A. Yes, sir.

Q. And the time devoted to it?

A. Well, yes; he took a running record of the engine all day long, as to just what it did.

Mr. HAGERTY. I think that is all.

Dir. BARTEL. Are there any further questions of Mr. Jewell?

By Mr. BURCHMORE:

Q. Mr. Jewell, is there any more service covered under this allowance to the Staley Company, than the mere placement of the cars on appropriate tracks in a position convenient for their unloading?

353 A. The allowance made to the Staley Company is intended to, and does, cover exactly the same work that we would have to do if we were in there with our own power, to complete our contract under the bill of lading.

Q. Now, Mr. Hagerty just asked you a number of questions about interference. Is that a well-defined term of which you can give us the meaning?

A. Well, of course, I have had to guess at just what Mr. Hagerty means. I imagine that he means this: would the engines be in each other's way during the period of service.

Q. Well, now, suppose—just go on; is that all?

P. 7168:

A. I am finished.

Q. Well, now, suppose that you have an industry on your road that has two or three side tracks at which you place cars for unloading. You perform—that is, the Wabash Railroad performs all of the service. Does your switch crew sometimes have to stop and wait a little bit while the industry does something with regard to the unloading of a car which has been partially unloaded?

A. Why——

(Continuing.)

Q. Or complete the loading of a car that has not been completely loaded, or something of that kind? Do you encounter delays that keep your crew waiting?

A. Both within an industry, and on an industry track, as for instance, you may have an industry track that has a gasoline station situated either at one end—either at the open end of the track or in the center. Your local or switch engine, either one, may get there with something that has got to go back of the location of that gasoline tank, and you have simply got to wait there until that tank is empty before you can make a move.

Q. That might be called interference, in one sense.

A. That would be interference, in one sense of the word; yes, sir.

Q. Do you sometimes have cases where, in switching an industry, your engine has to wait at railroad crossings or highway crossings that are adjacent to that industry?

A. Yes. You might have an industry located, for instance, where they would have to cut the crossing, under the law, every so often.

Q. And would that delay your switch crews, to some extent?

A. Naturally.

354 Q. And you might call that interference.

A. That would be interference.

Q. Well, now, when you get these different types of interference, do you in actual practice regard that as indicating the full discharge of whatever your duty may be, or do you go on, nevertheless, and perform some further placement service?

P. 7169:

A. We have to complete our service.

Q. And to complete your service, you place the car where it is to be finally unloaded?

A. Exactly.

Mr. BURCHMORE. That is all.

By Mr. STRASSER:

Q. Mr. Jewell, carrying that just a little bit further, how about the service to a carload shipper who unloads on the team track? Do you ever have any interference in spotting a car for him, or putting it where he can unload it?

A. Very often; yes, sir; particularly in a crowded terminal. I think that everybody knows that in a peak period of business, we very often have trouble taking care of our team track cars, particularly in connection with perishable freight, and in order to get rid of it as fast as a car is made empty on the team track, why, we have to get that empty out and a load in its place, which means that we have to go to the fellows who are unloading some other cars in on that track and get them to stop operations for a few minutes while we reach in and get that empty, and set a load in its place.

Q. And does it sometimes happen that more than one operator is unloading or loading a car, and he has to be disturbed?

A. Oh, yes; very often.

(Continuing.)

Q. And discontinue his operations until you can make the necessary switching?

A. Very often that occurs.

Q. Is that service expense or otherwise?

A. Well, team track switching is about the most expensive switching that you have.

Q. And aside from the expense, there is the wear and tear on your nerves, is there not, to hear those fellows cussing when you interfere with their operations?

A. Oh, yes.

355 Mr. STRASSER. That is all.

By Mr. BURCHMORE:

Q. What is your next station east of Decatur on the Wabash?

A. East?

Q. Yes. Decatur is on your main line, is it not?

A. Yes, sir.
Q. East and west?
A. Yes, sir.
Q. Now, what is your next station east of Decatur?
A. Well now, let me see.
Q. Well, I do not care, you may miss one, but give me a station just to the east.
A. I am just trying to think of one that has an agent in it.
Q. I want one with an agent, and perhaps a grain elevator, a small grain elevator, or something of that kind.
A. I wish I had a time card; I just cannot think.
Q. Well——
Mr. RICHARDS. Cerro Gordo, or Oakley.
The WITNESS. Cerro Gordo.

By Mr. BURCHMORE:

Q. Cerro Gordo?
A. Yes.
Q. What tracks do you have at Cerro Gordo for the delivery or receipt of freight? Is there a public team track there?
A. We have a small track there that is connected up with the elevator, but we also make some team track deliveries there.
Q. Now, is it not a fact that on that one track you perform public team track service, and on that same track you also perform private side track service, so to speak, in your deliveries to the elevator which is adjacent thereto?
A. Well, we have lots of stations on our line where we have exactly that same condition.

P. 7171:

356 Q. Well now, assume that condition at that point. Do you sometimes have a delay to your switch crew through having to cut the train on the main line, and then having to interrupt their switching operation because of the approach of passenger trains?
A. Yes; we do.
Q. Does that involve a substantial expense?
A. Well, of course, every lost minute is added expense.
Q. But you have cases on the road where the same track, which is a public team track, is also a private side track?
A. Oh, yes; and it would be perhaps the only track we have in the town, outside of the main line.
Mr. BURCHMORE. That is all.

By Mr. STRASSER:

Q. Mr. Jewell, comparing a carload shipment for the Staley Company and a corload of produce delivered on the produce track

at Chicago; which is the most expensive service—in connection with which car do you perform the most service, the most expensive service?

A. The car on the team track at Chicago.

By Dir. BARTEL:

Q. Well now, in answering that question are you merely taking the car at the interchange track of Staley, or spotting it within the plant of Staley?

Mr. STRASSER. No; spotting the car, completing the service.

Mr. HAGERTY. Only the service on the industrial track, or from your train yard in.

Mr. STRASSER. From the time the car arrives within the yard.

A. Well, as I got your question, it was a comparison between the setting on team track at Chicago, and the setting on the so-called interchange track where the Staley people——

Q. No.

A. Is that not what you referred to?

Q. No; I wanted you to make a comparison of the total service, regarding the Staley Company as an agent of the Wabash

P. 7172:

357 Railroad Company in completing the spotting service. The average car for the Staley Company, how does that expense, the expense of placing that car, compare with the average car that is handled on—that is an average car of produce.

A. Well, I would say that the average car of produce was very much more expensive than is the Staley operation.

Q. And what would you say as to a comparison of *of* the average revenue derived or enjoyed by the carrier from those two cars, the average car for Staley and the average car of produce?

A. Well, there would be no comparison between the earnings on a car of produce, and the earnings on a car of Staley's products.

By Dir. BARTEL:

Q. How far would you move the car of produce?

A. Well, that car of produce would go into our 47th Street yard, and would be hauled from there down to 22nd and Canal. First it would be taken out of the train at 47th Street, and classified into a cut for the Produce Market, and taken down there. The empties that might be setting in on those team tracks would have to be switched out, and then would come the process of sorting these loads that you had brought down into the different places.

Q. And how far would you handle the car, if you were spotting the Staley plant?

A. Well, the Staley connection with the Wabash is right in the arrival and departure yard.

Q. Well, if you were to spot the Staley plant, would you deliver the cars right at the Staley plant from your train, or would you first take them to some break-up yard, and then deliver them to the Staley plant?

A. Well, the train would pull into the yard right adjacent to the Staley connection, and there of course they would have to break them up, and make up the Staley cut, and go down with it.

Mr. STRASSER. Well——

By Dir. BARTEL:

Q. So there you are not comparing like with like, are you?

P. 7173:

A. Well, it is a different proposition entirely; but Mr. Strasser asked me which was the most expensive.

Q. Yes.

358 A. That was the——

Q. I just wanted to see what effect your answer would have, unless you are comparing like with like.

By Mr. STRASSER:

Q. Well, the distance you would handle it at Decatur would depend upon whether the car was coming from the east or the west, would it not?

A. No; because we are operating all in one yard at this time.

Q. Oh!

A. We have closed our westbound yard, and have consolidated the operations during this time in the eastbound yard.

Q. And you are taking that as the starting point?

A. Yes, sir.

By Dir. BARTEL:

Q. Now, was it your answer, that it cost you more to handle at the Staley plant than at the Produce Yard?

Mr. BURCHMORE. No.

By Dir. BARTEL:

Q. Just the reverse?

A. I said, more in the Produce Yard, much in excess.

Mr. BURCHMORE. Were you through, Mr. Director?

Dir. BARTEL. Yes.

By Mr. BURCHMORE:

Q. Is it proposed by anyone so far as you know, Mr. Jewell, to require pool engine service by the four railroads at the Staley plant?

A. No; I imagine that each of the carriers would want to go in there, and do their own work.

P. 7174:

Q. Would you see some objection to that, from the standpoint of the Wabash Railroad?

A. To all lines going in?

Q. Would you see some objection from the standpoint of the Wabash having some other railroad perform a pool engine service for all?

359 A. Well——

Q. At the Staley plant.

A. At Decatur is so hapens that the Wabash would be the only company that would be in a position to do the pool work.

By Mr. HAGERTY:

Q. Why is that?

Dir. BARTEL. Would you be in favor of that?

The WITNESS. Well, if we had to do the switching, I imagine that that would be the most economical way to handle it.

By Dir. BARTEL:

Q. Well, just in connection with that pool proposition, Mr. Jewell, do you know what the usual practice is, or what the usual charge is by carriers against other carriers for whom they perform a pool service?

A. Well——

Q. The usual practice.

A. There is no standard practice. As you will recall, I testified in the Corn Products Case about the rental of an engine; it is put in at $12 per hour.

Q. What I had in mind was this: the Illinois Central yards are a considerable distance from the Staley plant—I think Mr. Burwell testified that the distance was about three miles; and then they go to the Illinois Terminal and take up the Illinois Terminal traffic, and handle it down there. I assume that the Illinois Terminal pays them something for performing that work for them. Then in turn I assume that the Illinois Central pays the Ilinois Terminal something for trackage rights over the Illinois Terminal.

A. Well, I cannot say as to that arrangement.

Q. I just wondered what pool service would cost the Illinois Central, or the Pennsylvania.

P. 7175:

A. Oh, of course, the Wabash main yard is located right at the Staley plant. It is a big division point with us, and we have got all kinds of power there at all times; whereas, the other roads have not got that power; so we naturally would be the road that would take over the consolidated switching, if such a thing were put in.

360 By Mr. STRASSER:

Q. You do see some objection from the Wabash standpoint, for a sample, to having the Illinois Terminal go in there and do the switching, do you not, or the Illinois Central?

A. Well, I do not know just how the Illinois Terminal could do any switching in there. They have electric power.

Q. Well, any of the other companies.

A. Well, I do not know as there would be so much objection from the Operating Department, as there might be from the Traffic Department.

Q. Well, do you think there might be some objection from the Traffic Department?

A. I think very likely there would be.

Mr. STRASSER. That is all.

By Mr. HAGERTY:

Q. Before asking you these questions, Mr. Jewell, I would like to remove any uncertainty that there may be in your mind as to the sense and meaning in which I am using this term interference. By that I mean, any circumstance or action arising from or related to the industrial processes——

Mr. BURCHMORE. Oh!

By Mr. HAGERTY:

(Continuing.)

P. 7176:

Q. That might prevent the railroad from entering the plant with a string of cars, in an uninterrupted movement, and placing them at the final locations for unloading. Now among those factors of interference might be the instructions of the plant to place the cars at the gate and leave them there; it might be that the tracks were not in physical condition to accommodate your engine; it might be that the curves, cross-overs, and so forth, might not permit your power to operate safely, to safely enter in and upon those tracks; there might be some obstacle set in the way of your going in on the plant tracks and performing what otherwise would be what you conceive to be your duty in spotting those cars.

A. Well, if there had been a condition of that kind at any plant on which I would have occasion to testify, it would have been the first thing I would have mentioned, that we could not get in there with our own engines.

361 Q. Well, now, I want to ask you a question, and the question is, just what do you recognize as your limitations in spotting these cars in the face of this kind of interference, or these kinds of interferences, where they are encountered?

A. Well——

Q. (Continuing.) Making allowance for them.

Mr. BURCHMORE. Is that a question of law? If so, I challenge it.

Mr. HAGERTY. No, it is not a question of law. I am asking the witness, who is an operating man, what limitations he recognizes, as a practical matter.

Mr. BURCHMORE. Oh!

Mr. HAGERTY. (Continuing). In placing those cars, in the face of those kinds of interferences.

Mr. BURCHMORE. If that is the question I do not object to what he recognizes, of course.

A. There would be only one of the various cases which you have cited, that would prevent a railroad from spotting the cars, and that would be impossible curvatures of track, that would not bear our power.

P. 7177:

Q. Well, for example, if you run up to *to* the gate of one of these industries, for example, at the Staley plant, with your cars, ready to spot them, and you find that the tracks inside of the plant are in use by the plant engines and so continued in use for a period of three or four or five hours, and your engine and crew have to wait at the gate until the tracks are clear, would you call that an obstacle or an interference?

A. I think I specifically referred to that particular type of interference some little time ago.

Q. Well, just what would you do now with those cars under circumstances of that kind?

A. Well, I do not know anything we could do but wait until we could get in there. It would be up to us, to get those cars spotted, that is sure.

Q. And you would absorb the cost of that delay.

A. Naturally.

Q. That you encountered.

A. We would have to.

362 Q. And the only limitation, now, as I understand it from you statement, that you recognize, is one of a physical disability in reference to the industrial tracks, that prevent your engine going in on the tracks.

A. That would be the only thing. Of course, if some concern notified us that we could not bring a switch engine inside of the gate, why, we would let them come out and get them themselves, or unload them on the public team track.

By Mr. STRASSER:

Q. Well now, Mr. Jewell, it would be indeed unusual, would it not, to have one of those instances described by Mr. Hagerty, one of your engines under the circumstances described be interfered with for a period of three or four or five hours, by some intraplant operation.

A. I never heard of such a thing.

Mr. HAGERTY. It is conceded that that is an exaggeration, and it was used here merely as illustrative, that is all.

Mr. BURCHMORE. As illustrative of exaggeration, you mean?

P. 7178:

Mr. HAGERTY. Of what was meant by "interference."

Mr. STRASSER. What is the purpose——

Mr. BURCHMORE. I think we should find out what practically and actually happens.

Mr. STRASSER. Are we just trying a theoretical case here, or are we going to deal with practical things?

By Dir. BARTEL:

Q. Suppose the interference was for 30 minutes. What would be your answer?

Mr. BURCHMORE. Is that a question of practice, or one of law, may I ask?

Dir. BARTEL. Proceed.

The WITNESS. We would wait until we could get in there, and then we would go on in.

By Mr. STRASSER:

Q. Now suppose——

Dir. BARTEL. Well, will you just let me follow that up a little further, Mr. Strasser, please.

Mr. STRASSER. Certainly.

363 By Dir. BARTEL:

Q. Now, supposing you are making a check of industrial plant operations, and while you are riding the engine you encounter that interference of 30 minutes. Who is that delay charged to?

A. That would be put down by the man who was riding the engine, and handled in conformity with the formula by the accountants when they were putting their costs together.

Q. Well, just what would be the actual practice there? Would you take 30 minutes and charge it to the plant, or would you charge not only the 30 minutes delay, but also the time after the delay, to the plant, or would you——

A. I prefer that you ask that question of some member of the Accounting Committee, who actually does this work.

P. 7179:

Mr. BURCHMORE. And I would like that committeeman to state whether such a case ever really arose in such a test. I think these are hypothetical situations.

Dir. BARTEL. No, they are not hypothetical at all, Mr. Burchmore.

Mr. BURCHMORE. Well, you may know, Mr. Director, but I may know, too.

Mr. HAGERTY. Well, the witness said that in his judgment there was some interference would result in that plant if the carriers undertook to perform the service.

By Dir. BARTEL:

Q. From those studies, Mr. Jewell—have you ever encountered such interference, from the studies made by the enginemen who ride the engines, who made these tests?

A. Well, I do not always see their detailed records, and I have not personally had to do with a cost study for two years.

By Mr. BURCHMORE:

Q. Your freight trains wait for two or three hours sometimes at a crossing, do they *they* not, when they are running on the line?

A. Well, I would hardly say two or three hours, unless it was a fire. If they did, somebody would——

Mr. STRASSER. That is only in case a wheel comes off.

The WITNESS. I would hate to be the operating man on that division, that is all I have got to say.

364 By Mr. STRASSER:

Q. Well now, Mr. Jewell, on the question of this physical interference by means of or by reason of the curvature of the tracks: now, if it should eventually be held that the carrier is under an obligation to perform a spotting service within the plant, and the situation were such that it had no—that its engines were too large at that particular terminal to operate over the tracks of the plant, the carrier would have to provide itself with proper facilities, would it not?

P. 7180:

Dir. BARTEL. Well now——

A. It certainly would.

By Mr. STRASSER:

Q. And it might be a great deal more expensive to do that, than to make the industry a proper allowance for performing the service as its agent.

A. Yes, sir.

Dir. BARTEL. Let me see if I understand that.

By Dir. BARTEL:

Q. Suppose you have a narrow-gauge track in a plant. Do you think it is an obligation upon the carriers, to get a narrow-gauge engine?

A. No.

Q. To serve that concern.

A. No, and I do not think Mr. Strasser intended to go that far with it. I imagine Mr. Strasser meant this, that within a plant that might be well laid out, there might be some particular building that you had to spot at, that your engine could not get to. You would get around that by hooking on two or three or four cars ahead of your engine, and pushing them there. Your engine does not go over—or around that curve at all.

Q. I thought his question went, and your answer went, to the fact that you would have to purchase that kind of power in order to perform the service.

Mr. STRASSER. Well——

A. I did not get it that way.

By Mr. STRASSER:

Q. Do you know of any narrow-gauge plant tracks that connect with our line anywhere?

A. No, sir; I do not.

365 By Dir. BARTEL:

P. 7181:

Q. Well, take a track that has very light rail, that your power would not operate over, or a plant which has considerable curvature, that your locomotives would not negotiate—or could not negotiate? Do you think it would be your obligation to go out and buy power in order to negotiate those curves, or operate over that track?

A. Well, we probably would not have to go out and buy power; we probably could find a light engine some place around on the railroad; we could pick it out of the scrap heap, perhaps, and put it into the service.

Q. Well, suppose you did that. Do you think it would be your obligation to pick up that locomotive and put it into this particular plant, to do that spotting?

A. Well, I expect it would be our obligation in order to get any business, particularly at a competitive point.

By Mr. STRASSER:

Q. And that after all is the only way we have of making any money, is it not, hauling freight?

A. That is what we are in business for.

Mr. BURCHMORE. And passengers?

Mr. STRASSER. How?

Mr. BURCHMORE. And passengers.

Mr. STRASSER. Oh, passengers, we have lost them so long ago that we do not figure on them any more.

Dir. BARTEL. That is all, Mr. Jewell.

(Witness excused.)

Mr. HAGERTY. Is your traffic man here, Mr. Strasser?

Mr. STRASSER. Yes; Mr. Richards.

WABASH RAILWAY

C. N. RICHARDS, called as a witness, being duly sworn, testified as follows:

366 Direct examination by Mr. HAGERTY:

Q. Your full name and position?

P. 7182:

A. C. N. Richards; Assistant General Freight Agent, Wabash Railway, in charge of commerce work before the Interstate Commerce Commission and the state commissions.

Q. Mr. Richards, are you acquainted with the circumstances under which this allowance was arranged for, to be paid to the Staley Manufacturing Company?

A. You mean originally?

Q. Yes.

A. Well, what I have developed from my files.

Q. Do you know whether the question was ever presented to the Terminal Allowance Committee?

A. Not until 1929 or 1930.

Q. Was it presented to that Committee by your Company?

A. It was not.

Q. By what company?

A. Well, we do not know. We believe that we know, but we have nothing definite on it.

Q. Are you represented—is your road represented on this committee?

A. Well, we are represented on the Terminal Allowance Committee, but not on the Cost Study Committee, only as we furnish help to make the study.

Q. What officer of your company represents the company on the Committee?

A. The Terminal Allowance Committee?

Q. The Terminal Allowance Committee.

A. Mr. G. G. Early.

Q. Mr. Early?

A. Yes, sir.

Q. Do you know what action the Committee took on the application of the rail lines?

A. They made a study.

Q. They made a study, but did they make—did that Committee make any recommendation?

A. Well, I am not—our file does not indicate whether they did or whether they did not.

367 Q. Are you speaking now of the Cost Study Committee——

A. No.

Q. Or the Terminal Allowance Committee?

A. That is what I mean.

Q. The Terminal Allowance Committee.

P. 7183:

A. Yes, sir.

Q. You do not know whether they made any recommendation or not?

A. I am not sure about that, Mr. Hagerty.

By Mr. STRASSER:

Q. Now, what do you mean by "recommendation"—as to whether an allowance should be made or not?

Mr. HAGERTY. Yes, that is all I have in mind.

Mr. STRASSER. Well, Mr. Richards has testified that the allowance was made before the question was ever submitted to the Terminal Allowance Committee, and the Terminal Allowance Committee——

Mr. HAGERTY. I understand that to be so, but I am getting at another question.

Dir. BARTEL. It was granted——

Mr. HAGERTY. (Continuing.) Underlying that.

Dir. BARTEL. It was granted by the Baltimore & Ohio and the Wabash, but not by the other three carriers, because they did not get in there, until after the Allowance Committee was established, in 1930.

Mr. BURCHMORE. That is right.

By Mr. STRASSER:

Q. When was that allowance first inaugurated, Mr. Richards?

A. In 1922.

Q. At that time the cost study was made by the representatives of the Baltimore & Ohio and the Wabash?

A. The C., I. & W., and the Wabash.

Q. The C., I. & W. at that time?

368 A. Yes.

Q. And the Wabash?

A. Yes.

Q. Those were the only two companies interested at that time.

A. That is correct.

P. 7184:

Q. And that has been continuously in effect up to the present time—I mean the allowance.

A. The allowance—not the same allowance.

Q. I do not mean the measure of the allowance, I mean the fact that an allowance has been made——

A. Yes, sir.

Q. (Continuing.) Has existed since 1922.

A. That is correct.

Q. Now in 1929 you say it was referred to the Terminal Allowance Committee?

A. By one of the carriers only.

Q. Yes.

A. A Decatur carrier other than the Wabash.

By Mr. HAGERTY:

Q. Do you know the occasion for that reference?

A. No, sir; I do not.

Mr. HAGERTY. That is all.

Dir. BARTEL. Let me ask a question of him before he leaves, please.

Mr. STRASSER. Yes, sir.

By Dir. BARTEL:

Q. Do you know anything about the drayage allowance in force at Decatur on the Illinois Terminal?

A. I do not know anything about it, except I know that they do make an allowance.

Q. And on a minimum of what?

A. 6,000 pounds.

Q. What is your trap car minimum?

A. 6,000 pounds.

369 Q. Why do you—when did you make it 6,000 pounds?

A. I think it was in 1930, Mr. Director—if you will allow me, I will look at the tariff. Yes, December 28, 1930.

Q. Why did you reduce it from 10,000 pounds to 6,000 pounds?

P. 7185:

A. Well, one of the carriers serving Decatur called attention to the fact that that was the minimum generally in use within the

State of Illinois, and it was finally approved by the Committee action of the Illinois Freight Association.

Q. Did the fact that the Illinois Terminal had a 6,000-pound drayage allowance in force have anything to do with it?

A. It did not have anything to do with it as far as the Wabash Railway was concerned. It might have had something to do with it insofar as the line that served the notice, was concerned.

Q. Which line served the notice?

A. The Illinois Central.

Dir. BARTEL. That is all.

By Mr. BURCHMORE:

Q. Well, is 6,000 pounds the conventional minimum in Illinois?

A. It is.

Q. It is?

A. Yes, sir.

Q. So that this is not an isolated exception.

A. Not at all.

Q. At Decatur.

A. Not at all.

By Dir. BARTEL:

Q. When was that 6,000 pounds established in Illinois?

A. I could not say as to that.

Q. Do you mean to say that prior to 1930 your company and others serving Decatur maintained a minimum of 10,000 pounds when the prevailing minimum in the State of Illinois was 6,000 pounds?

A. We did.

370 Dir. BARTEL. That is all.

Mr. STRASSER. Just one more question, Mr. Richards, of a general nature.

P. 7186:

By Mr. STRASSER:

Q. You have some knowledge of the competition encountered by the railroads from trucks and waterways, and these various competing methods of transportation, I take it?

A. I have.

Q. In your opinion, if all terminal allowances were indiscriminately abolished, would that or would that not have an adverse effect on the ability of the Wabash Railway to compete with trucks, waterways, and so forth?

A. There is no question in my mind but what it would have a very bad effect on it, affecting us adversely.

Q. And carrying that a little bit further: Now, it is a fact that these allowances are in effect at a very few places on the Wabash, is that not true?

A. Yes, sir; we only have a few places where we grant that.

Q. Now, if the Wabash lost any more business to the trucks and the waterways, would that effect eventually be reflected in the charges that would have to be made on the carload and less-than-carload business remaining to it?

A. That is true—if we got any business.

Mr. STRASSER. That is all,

By Mr. HAGERTY:

Q. Does your company happen to be among those who have denied allowances to any industries for any reason?

A. Well, we are a member of the committee that has denied allowances to other industries.

Q. And did that rest upon these considerations that your counsel is making mention of; that is, the probable loss of traffic unless you made the allowance?

A. Well, of course, it would, but you must take into consideration every detail about the plant, and the question, were they really entitled to it? They have a regular committee that recommends whether they are entitled to it or not; they thoroughly investigate that.

371 Q. Are you referring now to the Terminal Allowance Committee?

A. That is right.

P. 7187:

Q. The Committee that acted in this Staley matter.

A. Well——

Q. The same committee?

A. That was not the Terminal Allowance Committee that made the study down there; it was the Cost Study Committee.

Q. Well, but this Committee that we speak of, the Terminal Allowance Committee of the Central Freight Association——

A. Yes.

Q. (Continuing.) Did that Committee authorize the member lines to make the allowance to the Staley Manufacturing Company, or did those lines require that authority?

A. No; they originally made that allowance back in 1922, without any cost study by the Terminal Cost Study Committee.

Q. Well, could they make that allowance today, without any reference to what action the Committee took?

A. I assume that they could.

Q. The action of that Committee is not mandatory or binding upon the railroads, is it?

A. It is not mandatory in any sense; it is optional with the carriers after the cost study is made and the recommendation is made, whether the carriers shall participate in it or not. It is not mandatory.

Q. Going back then to your first answer to my question, in which you stated that they had committees to handle these things: It is not essential that they be referred to the committees, is it, as I take it from your answer?

A. Oh, I would not say that it is absolutely essential, but that is the usual procedure. They are a little bit more strict about that now than they were in 1922.

372 Q. Now, are we to understand from the answers which you have made to your counsel's questions that the granting or denying of these allowances, at least in some instances, would depend upon whether you could hold the traffic or not?

A. I think that is correct; yes, sir.

Q. Is that the principal consideration?

P. 7188:

A. Well, all we have to sell is transportation, Mr. Hagerty, and if we cannot get traffic, we cannot make any money.

Mr. HAGERTY. That is all.

Dir. BARTEL. That is all.

(Witness excused.)

Mr. BURCHMORE. If the Director please, I think you will find that the trap car minimum is 6,000 pounds generally in Illinois and Iowa, and generally in this territory, if you will examine other witnesses. Of course, it is not directly at issue here, but I think there is no question but what that is true.

Dir. BARTEL. Is there anyone representing the Illinois Terminal?

Mr. POWELL. Yes, sir.

ILLINOIS TERMINAL RAILROAD

H. G. POWELL, called as a witness, being duly sworn, testified as follows:

The WITNESS. My name is H. G. Powell; I am General Traffic Manager, Illinois Terminal Company, St. Louis, Missouri. I might explain, Mr. Director, why I am here, instead of an operating officer. Mr. A. P. Titus, our Vice President and General Manager, had intended to be here, but it was necessary for him to be in Washington today at a hearing before the Interstate Commerce Commission; so I was substituted for him.

By Dir. BARTEL:

Q. Mr. Powell, can you tell us—are you familiar with the allowance that is being granted to the Staley Company?

A. Yes, sir.

Q. Can you tell us why it is that your company finds it necessary to grant a larger allowance than the other carriers that serve that plant?

P. 7189:

373 A. We allowed $1.89 per car because in January 1930, when the cost study was made, it was found that it was costing the Staley Company $1.8918 per car to switch, and when our tariff was published effective March 17, 1930, we used that basis for the allowance.

Q. Why did you use—do you know why the other carriers did not follow the same basis?

A. I do not, unless it was that at the time their cost study was made, they found the cost to be not to exceed $1.65 per car.

Q. Was there not a joint cost study made by all three of the lines?

A. No, sir.

Q. Did you make an independent cost study?

A. We made an independent cost study with the Staley Manufacturing Company, covering the period from January 17th to 31st, 1930, and attached a copy of that cost study, properly certified, to our tariff filed with the Commission.

Q. Now there is one other question that I wanted to ask you, Mr. Powell.

Mr. BURCHMORE. May I ask him a question about that, now, to finish that?

Dir. BARTEL. I am coming to that.

By Mr. BURCHMORE:

Q. You heard what Mr. Burwell said about some tariff that had been rejected by the Commission. Did you have that experience?

A. I did have that experience, yes, sir; but not with the Staley people. About 60 days—or 30 days possibly before I issued their tariff, I published a tariff covering a plant allowance to the Granite City Steel Company, and that tariff was rejected by the Commission; I made a trip to Washington, to talk it over, and was told just how to issue the tariff, and what kind of study to have made, which was done, and another tariff was issued covering the allowance as shown in the exhibit of the cost study.

Q. At Granite City?

A. At Granite City.

Q. And did you profit by that experience and that precept and example from the Commission, and publish your Staley tariff in the manner you have stated?

P. 7190:

A. Yes, sir.

Mr. BURCHMORE. Thank you.

374 By Dir. BARTEL:

Q. Mr. Powell, do you happen to have with you a copy of your allowance tariff?

A. I believe I have, Mr. Director. Yes, sir—I. C. C. 153.

Q. Now, what is the—you make an allowance under that tariff on carload traffic and on trap cars, do you not?

A. Yes, sir.

Q. What is your minimum on trap cars?

A. Including trap cars containing 10,000 pounds or more of less than carload freight.

Q. Now, why do you make the allowance on drayage, on trap cars drayed to your plant—to your freight house?

A. That was a thing that we inherited from the old Illinois Traction System, put in a number of years before I had any connection with the company; but I am sure that it was put in because it was an expedited service, and was cheaper than the switching service. We could not have a car of 6,000 pounds, or 10,000 pounds of merchandise switched to us for less than $2.70 per car, and it would delay the freight 24 hours in forwarding. By the 3-cent allowance we could get that same 6,000 pounds of freight to our freight house the day it was shipped, for $1.80.

Q. Well, was that allowance put in, in lieu of trap car service?

A. Yes, sir.

Q. Well, why the difference in minimum?

A. This is not our trap-car minimum. We will only absorb $1.89 on 10,000 pounds or more of freight. That does not say that all of our trap cars are subject to the 10,000-pound minimum. We have a 6,000-pound minimum universally on our line in Illinois.

Q. When was that established; in 1930?

A. No, sir; that has been in effect for a number of years; I have not got the tariff which covers that with me, but that has been in effect for—oh, I guess since back in 1921 or 1922, possibly. It was long before I was connected with the company.

P. 7191:

Q. So, then, the drayage allowance was not in lieu of the trap-car service?

Mr. BURCHMORE. Yes.

A. Yes, sir, the drayage allowance was in lieu of a trap car.

375 By Dir. BARTEL:

Q. But if you handled the trap car, you required a 10,000-pound minimum?

A. No, we will switch a trap car for 6,000 pounds.

Q. I mean, on which you would grant the allowance.

A. We will only grant the plant—an allowance to the plant company, on 10,000-pound cars.

Q. Yes?

A. Or more.

Q. And if they dray it, you make an allowance on 6,000 pounds?

A. Yes, if they would dray less than carload merchandise to our freight house, we allow 3 cents per 100 pounds.

Q. Now there is only one other question I want to ask you, Mr. Powell, and it is probably an operating question, but you can perhaps answer it. I understand your power is all electric, is that right?

A. No, sir; we are a steam and electric railway. The line that serves Decatur, Illinois, is the electric line only, but we have engines in our Decatur yard that can be operated from electricity from the trolley, from storage batteries, or from gas.

Q. Well, if you were called upon to switch the Staley plant with your own power, could you do it?

A. Yes, sir; we have combination engines available at Decatur, and we can switch on any track that they have in the plant.

By Mr. HAGERTY:

Q. Did your company submit this question in any of its phases to the Central Freight Association Terminal Allowance Committee?

P. 7192:

A. No, sir; we are not a member of that Committee. The allowance was in via our competitors, and we did not refer to it to the Allowance Committee.

Mr. HAGERTY. That is all.

Dir. BARTEL. That is all.

(Witness excused.)

Mr. HAGERTY. Now may we have Mr. Hynes, of the Baltimore & Ohio, in connection with the Staley plant.

M. V. HYNES, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. HAGERTY:

Q. Your name?
A. M. V. Hynes.
Q. Your official relation to the Baltimore & Ohio Railroad?
A. Assistant Superintendent.

By Mr. BURCHMORE:

Q. Where, at what location?
A. Indianapolis, Indiana.

By Mr. HAGERTY:

Q. Does the plant of the Staley Manufacturing Company happen to fall within your operating jurisdiction?
A. Yes, sir.
Q. And the service there?
A. Yes, sir.

p. 7193.

Q. Are you acquainted with the circumstances under which the matter of an allowance to that plant was referred to the Terminal Allowance Committee?
A. In a general way only. It happened ten years ago or more. Just as Mr. Burwell told you this morning, there had been some delays, because the Wabash and the C., I. & W. were both going into the plant at the same time, and it was felt that it could be operated more economically if Staley did it, and it was entered into at that time after a cost study by both railroads.
Q. Well, what was the occasion for referring the matter to the Terminal Allowance Committee?
A. I do not know.
Q. If you recall.
A. I do not know anything about that.
Q. Do you happen to know when it was referred to that Committee?

377 A. No, I do not.
Q. Do you know anything about the action taken by that Committee?
A. I do not.

By Dir. BARTEL:

Q. You have testified in this case before, have you not, Mr. Hynes?
A. Yes, sir.

Mr. HAGERTY. Mr. Webber, was the Baltimore & Ohio Railroad Company represented on the Terminal Allowance Committee at the time that reference was made, do you happen to know?

(Discussion outside the record.)

By Mr. BURCHMORE:

Q. Mr. Hynes, you testified regarding this particular plant on November 3rd at Cincinnati, did you not?

A. Yes, sir.

P. 7194.

Mr. HAGERTY. Now, Mr. Smith, is there anyone connected with the Illinois Central, that you know of, who happens to be informed as to the circumstances under which this question was referred to the Terminal Allowance Committee, when it was referred, and for what purpose and what action was taken?

Mr. SMITH. Not so far as I know, Mr. Hagerty, for the reason that in 1922, when the allowance was first given, it was given only by the Wabash, and the C., I. & W. The Illinois Central made no allowance until 1930. Following 1922, as I understand it, the Wabash switched for the Illinois Central. We paid the Wabash switching charges. We had nothing to do with the allowance at the time it was given.

Mr. HAGERTY. Well, do you happen to know whether at the time the Illinois Central first made the allowance, there was any reference made to the Terminal Allowance Committee?

Dir. BARTEL. Off the record.

(Further discussion outside the record.)

Dir. BARTEL. Are there any further questions of this witness?

Mr. HAGERTY. Not of this witness, no.

Dir. BARTEL. That is all.

(Witness excused.)

Dir. BARTEL. Mr. Johnston, of the Pennsylvania, will take the stand for a moment.

378 PENNSYLVANIA RAILROAD

J. T. JOHNSTON, recalled as a witness, having been previously sworn, testified as follows:

Direct examination by Dir. BARTEL:

P. 7195:

Q. Mr. Johnston, at the time the Pennsylvania, Illinois Central and Illinois Terminal built into the plant of the Staley Manufacturing Company, what was the allowance which those three carriers—or which the Illinois Central and the Pennsylvania—what was the basis for the allowance they made the Staley Com-

pany? Was it based on a cost study, or did they just simply meet allowances that had already been published by the Wabash and the Baltimore & Ohio?

A. We met the allowance that was already in, and stated that it was a temporary arrangement until such time as we could have a cost study made. We believed that our tariff must be protected by a cost study, and while we had an agreement with the Staley Company that gave the basis on which the former allowance was established, and filed that agreement with the tariff, we still maintained that a cost study was in order and should be prosecuted; and that was done in June, I believe, of 1930.

Q. And what did that cost study develop?

A. Well, the cost study developed two figures, one on the present basis, and one on the 1916 basis. The present basis was $1.37 per car, and the 1916 figures were $1.03.

Q. And the allowance was $1.65?

A. The allowance was $1.65.

Q. Why was not the allowance changed, to meet the cost figures?

A. Well, in the first place, claim was made that the plant was not in, or under normal operation at that time, and that if a normal amount of traffic was being handled in and out, with the amount of service that had to be operated in any event, the cost per car would be made up—well, it would mean a different figure than what resulted at that time.

Q. Well, if——

A. (Continuing.) There was also another feature to it, and that was that the roads were not a unit as to whether the present basis or the 1916 basis should be used.

379 Q. But on either basis the allowance then published in your tariff was in excess of what the cost study showed.

A. Yes, sir.

Q. Now, you say that one of the reasons was, the plant was not in normal operation.

A. Yes.

Q. Do you mean that they were not handling as much traffic as they normally did?

A. They were not handling as much traffic, and ordinarily, that would mean of course a higher per car unit; but unfortunately, in this case it was not so, because that did not permit them to reduce the number of engines that they had in service.

Q. Did not permit them to reduce, did you say?

A. No, I mean—they had the same number of engines in service, as I understand it, but had a less operation, that showed a rate per car that they claimed was too low; but it was not substantiated by monthly reports that were furnished to the carriers in

accordance with the tariff which provides that they are to be paid a maximum amount, actual cost, but not to exceed; and they presented to us monthly statements based upon the formula that has been presented, and those monthly statements indicated at all times that the actual cost was greater than the amount received.

Q. And notwithstanding the fact that the cost study which was made, showed a less cost.

A. Notwithstanding that fact; yes, sir.

Q. Now, have you ever made any other cost study under normal operations?

A. No, sir. We have before us, and have before us for probably a year, the question of making another cost study at the plant. It has been agreed by both parties that it shall be made, but no one has felt that the plant is being operated under normal conditions, and nobody is of the opinion that a figure that could be determined by a plant study—a cost study today, would reflect the true conditions.

Q. Well, when you had your first cost study made which reflected a cost less than the amount of your allowance, but nevertheless you fixed the amount at $1.65, was the controlling factor there that that was the allowance being paid by your competitors, and you just wanted to meet what they were doing?

P. 7197:

A. Well, I think you have got the facts just a little bit awry there. We published—and when I say "we," I mean the
380 Pennsylvania Railroad, published an allowance of $1.65, which was the figure that was already in and had been in for some years, by the Baltimore & Ohio and the Wabash.

Q. Yes?

A. (Continuing.) Now, after the date of that publication was the date—the time of the cost study as the promulgation of the result of the cost study. We did not change our tariff from $1.65 to the basis of the cost study for the reasons I have stated.

Q. Yes. Well, you made your allowance, then, before you made the cost study?

A. Yes.

Q. And in arriving at the amount of the allowance you met what your competitors were allowing.

A. Exactly.

Q. And you have not disturbed that as the result of the cost study because it was not made under normal conditions.

A. That is one of the reasons; yes, sir.

Mr. STRASSER. Are you through, Mr. Director?

Dir. BARTEL. Yes.

By Mr. STRASSER:

Q. Mr. Johnston, is it not also true that Mr. Burwell claimed that he had made an independent investigation of his costs, and found that they were much greater than those arrived at by the—as the result of the cost study?

A. Yes, I think he arrives at—I think he arrived at about $1.97, Mr. Strasser. I have got that here some place.

Q. I think that was it, $1.97, or $1.98.

A. Something of that kind.

By Dir. BARTEL:

Q. Well, have you found any of these plants to which you make an allowance, that have not claimed costs in excess of what you allow them?

P. 7198:

A. I think not, no; I think they would all claim it cost much more for them to do it; I think so.

381 By Mr. HAGERTY:

Q. Mr. Johnston, was your company among other Central Freight Association lines observing the rules that were adopted by the Central Freight Association Lines governing allowances to industries, at the time that this question concerning the Staley plant was considered?

A. Well, I do not know what particular rule would have a bearing, Mr. Hagerty——

Q. Well——

A. (Continuing.) But we, to the extent that we could and meet our competition, carried out all of the rules.

Q. I am going——

A. There were times when we could not do that, however.

Q. I am going to show you what purports to be a copy of a letter dated June 5, 1923, the subject of which is "Procedure governing application of allowances to industrial roads on account of plant facility or common carrier services"—no, wait a moment; I think I have gotten hold of the wrong letter; I refer to one dated May 3rd—no, that is not it, either. Yes, that is right, the date is June 5, 1923. That is identified as Circular Letter No. 1261 of the Central Freight Association, and it is addressed to the Chief Freight Traffic Officials of the Central Freight Association Lines. It reads in part as follows—and I can put the whole letter in if there is any reason for having it in. First, "Definition of iron and steel industries to which plant allowances are to be made. Allowances are to be restricted to plants engaged in the manufacture of iron and steel, strictly analogous to those already

receiving allowances, leaving to traffic officers to determine such analogy; the purpose of making new allowances being simply to remove discrimination.

P. 7199:

"Paragraph B: Application for increase in present plant facility allowances to iron and steel and other industries. Inasmuch as these allowances are made simply for the purpose of removing discrimination; and as the existing allowances are based on 1916 costs, this basis is to be maintained as the maximum." Now at the close of that letter, that circular letter, the action of the Committee is shown and stated to be as follows:

"The Central Traffic Executive Committee at a meeting of May 16, 1923, announced as follows: (a) That applications for initial allowances to industrial roads for plant facility services on account of other iron and steel industries, be declined. That applications for increases in present allowances be referred to the Accounting Committee to make a cost study based upon special plant facility formula using 1916 costs."

382 Mr. BURCHMORE. All right.

By Mr. HAGERTY (Continuing):

Q. Now my question is whether in connection with the application here by the Staley people, or consideration of the allowance that had been paid that company by the railroads in 1930 or 1931, any consideration was given to the fact that it was not an iron and steel industry, and that the allowance was not based on 1916 costs, and whether that would have any effect on the question at all.

A. Yes; it would have an effect, but that effect would be overbalanced by the fact that before that rule was written, this allowance was paid.

Q. Well then, under the rule that the Committee was working under——

A. Under the rule that the Committee was working under.

Q. (Continuing.) No allowance to an industry other than an iron and steel industry, as I understand it, was abolished. It might have been increased, it might have been decreased.

P. 7200:

A. The Committee, Mr. Hagerty, might in accordance with that rule, or those rules, have rendered a report that in their judgment should an allowance not be made, and that report of the Committee might be of no value whatever by one or two roads saying "Why, we will make it anyhow."

Q. In this case of the Staley Company——
A. In this case we did not——
Q. Just a moment now.
A. Yes.
Q. (Continuing.) When it was considered in 1930 or 1931, did the Committee make any recommendation other than—that is, as to the amount of the allowance?
A. The Committee did not get the Staley question before it, Mr. Hagerty, until about 1930—I think that is about the time when the Staley situation had changed, due to the fact that whereas only two roads had reached them in the past and over a long period of years had made them an allowance, their lay-out had been changed now so that five roads reached them as initial carriers, and the question arose as to what those three new roads should do in competition with what was already in effect.
383 Based upon that, the Committee had no option of following those rules. The rule had been broken, you might say, before it was written. They had the question before them at the outset, "Inasmuch as an allowance is now being made to the Staley plant, and inasmuch as three other railroads are now initial lines there and will have to make an allowance if they are going to compete, what shall be the measure of that allowance?" And the Committee found accordingly.
Q. And that was without reference to any of the other considerations that might have had attention if your rules had been in effect when the allowance was first made back in 1920?
A. Quite probably; yes, sir.
Mr. STRASSER. Mr. Johnston——
Mr. HAGERTY. That is all I have.
Mr. BURCHMORE. May I see this Circular 1261, a portion of which was read into the record?
Mr. HAGERTY. Yes.
Mr. BURCHMORE. I would like to interrogate the witness regarding it.

P. 7201:

By Mr. STRASSER:

Q. Mr. Johnston, this cost determined by the Cost Study Committee, is that the 1916 cost?
A. You mean, the figure that they established?
Q. Yes.
A. They established both 1916 and present day.
Q. What was the 1916 cost?
A. I gave it to you a moment ago.

Q. Is that the figure that you gave?

Dir. BARTEL. He gave both.

The WITNESS. I gave both of them. The 1916 cost was——

Mr. SMITH. $1.03?

The WITNESS. $1.03, and 1929, which was the year of the study, was $1.37.

By Mr. STRASSER:

Q. Well now, the tariff—the 1927 cost, was that?

A. No, the 1929 cost, which was the year of the study, was $1.37.

384 Q. Well now, the tariff that was published by the Wabash and the C., I. & W. at the time the allowance was first established, if my memory serves me right, contained a provision that either party might every six months ask for a new cost study and revision of the allowance; is that correct?

A. Yes, sir; that is right; there was an agreement filed with the tariff to that effect, or in that tenor.

Q. So that any revision of the cost would necessarily mean the present-day cost, would it not?

A. Oh, I do not think so; I do not know why it should.

Q. Well, do you mean to say, then, that the 1916 cost should be the basis for the allowance?

P. 7202:

A. Well, I do not think that the agreement made in 1916—or rather, made with the initial tariff of the Wabash and the C., I. & W., precluded any change in the method of figuring for ever and ever, Amen. Now, long since that time, a basis has been arrived at, a basis of mutual understanding, as to how these cost studies shall be conducted, and how they shall be figured. I do not think for a moment that any railroad is estopped from ever doing other than placing into effect the present-day cost.

Q. Well, did your tariff contain a similar provision to that which was carried in the Wabash, and C., I. & W. tariffs?

A. Our tariff was, just as nearly as we could draw up the agreement, a facsimile of yours.

Q. Well, under that tariff, then, the Staley Company could at any time, but not oftener than once every six months, ask for a new cost study and a revision of the allowance?

A. Yes, sir.

Q. And would that necessarily contemplate that the new allowance established should be the cost at the time the new cost study was made?

A. Under the general basis for ascertaining costs at the time the study was made; yes, sir.

By Dir. BARTEL:

Q. The difficulty in this case is that you made the cost study, and found the cost less, but you did not reduce it; that is true, is it not?

A. That is perfectly true; yes, sir.

385 By Mr. POWELL:

Q. Mr. Johnston, what period in 1929 did that cost study which showed $1.37 per car, cover, or what period was it taken for; the entire year, or for——

A. No.

Q. A certain number of days.

A. It was a 10-day study, my recollection is.

Q. Ten days?

A. Yes, sir.

Q. What month?

A. I think it was June, 1929, Mr. Powell.

Q. Then that was before the depression had hit us, when they had a large volume of traffic?

A. Well, I am not prepared to say just how they—how the normal situation would compare with that situation at the time of the cost study, but I do know that the statement has been made, to that effect, as a reason for the failure to publish the $1.03, or $1.05.

P. 7203:

By Mr. STRASSER:

Q. Well, Mr. Johnston, might not that failure to put into effect the result of that cost study be accounted for by the general condition of all of the railroads and their being concerned with looking for ways and means to reduce expenses, and that they might have overlooked this one?

A. Well, I do not know, Mr. Strasser. That is rather specious. I will leave that to your own determination.

Mr. STRASSER. Well, I think that would be a very practical consideration. We all know that the railroads were all jumping sideways, and perhaps could be excused for overlooking certain things.

Mr. BURCHMORE. Mr. Director——

By Mr. POWELL:

Q. Mr. Johnston, in connection with the cost study, if they switched with three engines, or four engines, 1,000 cars per day,

the cost would be less than if they only switched 500 cars per day, would it not?

A. Why, that is purely a question of mathematics.

Q. I understood you to say they had not reduced the number of engines in the plant.

386 A. Well, Mr. Powell, I did not participate in the cost study. My only idea was that I thought the cost study was necessary to establish the validity of our tariff and I did my best to have it made. Now I did not participate in it actively, and I was not a member and am not a member of either the Cost Study Committee or the Terminal Allowance Committee. I do not know what the argument may have been pro and con. I only know what the result was.

P. 7204:

Mr. BURCHMORE. Mr. Director, Mr. Hagerty promises me that this Circular Letter No. 1261 of June 5, 1923, from which he read selected sentences into the record, is to be made an exhibit later on, and if so, I would not take the time now to examine Mr. Johnston about it. There may be something I want to call attention to, that it is amendatory of a previous circular, and that it was superseded shortly by a later one; but I can do that at that time.

Dir. BARTEL. All right. That is all.

Mr. HAGERTY. All I had in mind in presenting that to Mr. Johnston, was to find out if it is his understanding that the Central Freight Association Lines are now guided by that rule, or were then guided by that rule, that allowances generally would be made only to iron and steel industries, and then on basis of the 1916 costs.

The WITNESS. To the extent that it was humanly possible, Mr. Hagerty, those rules were adhered to. There were many instances where that was not possible, however, and they were not adhered to.

Q. And this Staley Manufacturing Company is one of the exceptions to the rule, brought about by the circumstances already explained of record?

A. That the allowance was paid——

Q. Yes.

A. Before the rule was written; yes, sir.

Mr. HAGERTY. That is all.

Dir. BARTEL. That is all.

(Witness excused.)

1 *Plaintiffs' Exhibit No. 2*

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No.—Ex Parte 104, Part 2

TERMINAL SERVICES—A. E. STALEY MANUFACTURING COMPANY TERMINAL ALLOWANCE

CHICAGO, ILLINOIS, *June 27, 1938,*
9 o'clock A. M. Central Standard Time.

Before HOMER C. KING, Examiner, Interstate Commerce Commission.

Met pursuant to notice.

Appearances

John S. Burchmore (Walter, Burchmore & Belnap), 2106 Field Building, Chicago, Illinois, appearing for A. E. Staley Manufacturing Company.

C. C. La Forgee, Decatur, Illinois, appearing for A. E. Staley Manufacturing Company.

T. C. Burwell, Decatur, Illinois, appearing for A. E. Staley Manufacturing Company.

Nelson Thomas, 3328 Interstate Commerce Commission Building, Washington, D. C., appearing for Interstate Commerce Commission.

Guernsey Orcutt and Edward A. Kaier, 652 Union Station, Chicago, Illinois, appearing for the Pennsylvania Railroad Company.

2 H. G. Powell, St. Louis, Missouri, appearing for the Illinois Terminal Railroad Company.

Robert Mitten, 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad Company.

V. S. Brown and L. H. Strasser, 1667 Railway Exchange Building, St. Louis, Missouri, appearing for the receivers of the Wabash Railway Company.

Edward F. Ledwidge, Sr., Granite City, Illinois, appearing for the Granite City Steel Company.

Frank J. Goebel, 1315 Union Central Building, Cincinnati, Ohio, appearing for the Baltimore & Ohio Railroad Company.

4 *Proceedings*

Exam. KING. Come to order please, gentlemen. The Interstate Commerce Commission has set for further hearing the part of the

proceeding in Ex Parte 104, Part 2, practices of carriers affecting operating revenues or expenses, which relates to the 55th Supplemental Report of the Commission in that case, and that further relates to the A. E. Staley Manufacturing Company terminal allowance. Who appears for the A. E. Staley Manufacturing Company?

Mr. BURCHMORE. I desire to enter my appearance, John S. Burchmore, of Walter, Burchmore & Belnap, 2106 Field Building, Chicago, Illinois, for the A. E. Staley Manufacturing Company, and also that of Mr. C. C. La Forgee of Decatur, Illinois, for the A. E. Staley Manufacturing Company. Mr. La Forgee is general counsel for that company and a member of the bar of the Supreme Court of the state of Illinois, and while not a practitioner before this Commission, he is a corporate officer and executive officer, and as such is entitled to appear.

Exam. KING. Are there any other appearances?

Mr. THOMAS. Nelson Thomas, 3328 Interstate Commerce Commission Building, Washington, D. C., appearing by direction of the Interstate Commerce Commission to assist in the development of this record.

Exam. KING. Are there any other appearances?

(No response.)

Exam. KING. Do you have a witness, Mr. Burchmore?

Mr. BURCHMORE. Yes.

Mr. POWELL. Do you want the appearances of all other parties, other than the A. E. Staley Manufacturing Company?

Exam. KING. Anybody who desires to appear in this case may enter his appearance now.

Mr. POWELL. I want to enter an appearance for the Illinois Terminal Railroad Company.

Exam. KING. Give your name to the reporter.

Mr. POWELL. H. G. Powell, St. Louis, Missouri.

Exam. KING. Fill out your appearance blank and give it to the reporter, please, Mr. Powell.

Mr. POWELL. All right.

Exam. KING. I might say further, gentlemen, that this further hearing is ordered by the Interstate Commerce Commission only to permit the presentation of evidence of changes, that is, at the Staley plant, since the prior hearing, in operating or other conditions with respect to the interchange, receipt or delivery of cars handled to and from the Decatur, Illinois, plant of the A. E. Staley Manufacturing Company and to and from the plant of the Mississippi Valley Structural Steel Company. That is by order dated the 2nd day of May of this year.

Mr. LA FORGEE. I think we so understand the order, Mr. Examiner.

Exam. KING. Are there any further appearances to be
6 entered at this time?

Mr. MITTEN. Mr. Examiner, I would like to enter the appearance of Robert Mitten, 135 East 11th Place, Chicago, Illinois, on behalf of the Illinois Central Railroad Company.

Exam. KING. Have you given your appearance to the reporter?

Mr. MITTEN. I am filling it out.

Exam. KING. If there are any other appearances to be entered, fill them out and give them to the reporter.

Mr. STRASSER, I would like to enter the appearance of V. S. Brown and L. H. Strasser, St. Louis, Missouri, for the receivers of the Wabash Railway Company.

Mr. ORCUTT. Edward A. Kaier and Guernsey Orcutt, 652 Union Station Building, Chicago, Illinois, appearing for the Pennsylvania Railroad Company.

Mr. GOEBEL. Frank J. Goebel, 1315 Union Central Building, Cincinnati, Ohio, appearing for the Baltimore & Ohio Railroad Company.

Exam. KING. Are there any other appearances?

(No response.)

Exam. KING. Are you ready to proceed, Mr. Burchmore?

Mr. BURCHMORE. Yes.

Exam. KING. You may call your witness.

Mr. BURCHMORE. I will call Mr. Burwell.

Exam. KING. Be sworn, Mr. Burwell.

7 T. C. BURWELL was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. Please state your full name and the city where you reside, Mr. Burwell.

A. My name is T. C. Burwell. I reside at Decatur, Illinois.

Q. What is your connection with the A. E. Staley Manufacturing Company?

A. Vice president of the A. E. Staley Manufacturing Company.

Q. Are you a member of the Board of Directors of that company?

A. I am a member of the board of directors and the executive committee, also.

Q. You have general charge of matters of traffic and transportation of that company?

A. I do.

Q. Does your jurisdiction extend to any other features of the conduct of the business other than, of course, the jurisdiction of a director would—but, I mean, as an officer?

A. I have certain duties involving sales in addition to traffic.

Q. How long have you been in charge of traffic and transportation matters for the A. E. Staley Manufacturing Company?

A. Since June 1921.

Q. Previous to that time in what business were you engaged?

A. I associated myself with the A. E. Staley Manufacturing Company on December 1, 1917, as chief clerk of the traffic
8 department. From 1909 until that time I was associated with the Wabash Railway.

Q. In what department?

A. I was in the traffic department of the Wabash Railway from 1915 until I went to the A. E. Staley Manufacturing Company, located at Decatur, Illinois. Prior to that I was a relief agent and back in 1912 I was also associated with the traffic department of the Wabash Railway.

Q. You were in the transportation and traffic departments of the Wabash Railway for a number of years before your employment with the Staley Company?

A. From 1909 to 1917.

Q. Were you a witness before the Interstate Commerce Commission in the hearings in 1932 concerning terminal practices at your plant at Decatur?

A. I appeared before the Interstate Commerce Commission in 1932; yes.

Q. Was that responsive to a notice or invitation from the Commission to appear?

A. I had a communication from the Commission inquiring whether I would be willing to appear or whether it would be necessary to subpoena me. I indicated my willingness to appear without subpoena.

Q. You appeared voluntarily in response to that invitation?

A. That is right.

9 Q. Now, the Commission's 55th Supplemental Report, 215 ICC 656 is dated May 22, 1936. At that time what engines were performing the service of placing cars within the Staley plant at Decatur?

A. Engines owned and operated by the A. E. Staley Manufacturing Company.

Q. You were receiving an allowance from the railroads for that service?

A. We were receiving an allowance representing the actual cost, but not to exceed $1.83 per car.

Q. Since that date have there occurred changes in the location and use of various tracks at the plant?

A. There have been new buildings constructed and put into operation, which of necessity have required some changes in

tracks. There have also been some of the tracks that were in service at that time taken out of service.

Q. Has there been a change in the method of moving cars into and out of the plants?

A. There has. In fact, the Staley Company ceased to operate its engines on July 8th, 1936.

Q. Are you prepared to go into the various changes of a physical and traffic and other nature that have occurred since 1936?

Yes, sir.

Q. I will ask you first if you have a map of the railway terminals in the city of Decatur, Illinois.

10 A. I have a map of the Wabash Railway in the city of Decatur, extending from Fairview Avenue to Brush College Road. Shall we introduce it at this time?

Q. How did you obtain this map?

A. I requested copies from the division engineer at Decatur. They were furnished him by his superiors in St. Louis.

Mr. BURCHMORE. I will now ask, if the Examiner please, that this map which has been produced be marked for identification as exhibit—whatever number the Examiner directs.

Exam. KING. It may be identified as "exhibit No. 1."

Mr. BURCHMORE. Mark this please, Mr. Reporter.

(Exhibit No. 1 identified.)

Mr. THOMAS. Do you have copies of that exhibit, Mr. Burchmore?

Mr. BURCHMORE. Yes. We are distributing them.

Mr. THOMAS. Very well.

By Mr. BURCHMORE:

Q. This map, exhibit No. 1 for identification, shows all of the tracks of the Wabash Railway from the western to the eastern limits of Decatur?

A. It shows the tracks from the Illinois Terminal interchange at the west end of the city limits to a subway at Brush College Road at the east end of the Decatur yard limits. It does not show the Wabash yards south of the subway on West Eldorado Street, there being no industries located south of that point.

Mr. BURCHMORE. We have not opened this exhibit all the

11 way up. It is very large, and it may cause confusion if we open it at this time.

Exam. KING. Proceed.

By Mr. BURCHMORE:

Q. At the time of the 1932 hearings and the 1936 decision, how were cars of freight which moved into Decatur from points in other states taken to the Staley plant?

A. Well, each of the road haul lines handled their traffic inbound to the plant and the Staley engine handled those cars for placement.

Q. The five railroads entering Decatur all brought cars by various arrangements up to the Staley plant?

A. That is right.

Exam. KING. Just a moment, now.

Mr. BURCHMORE. At the present time, what railroads—I think that was fully described in the old record.

Exam. KING. I do not understand that all five of the railroads operated into the Staley plant, I thought that one of the railroads did the work for a couple of others.

Mr. BURCHMORE. That is, as agent; but it was on their behalf.

Exam. KING. All right.

Mr. BURCHMORE. I have no desire to try to change what was shown before.

Exam. KING. Very well. Proceed.

Mr. THOMAS. It further occurs to me that these are things
12 that are already established. I presume Mr. Burwell is testifying now just as he did at the previous hearing. The Commission has written its report and has described the operations very thoroughly. Therefore, I suggest that while I am not disposed to think that you should go outside of a reasonable restriction, in a certain sense this does go beyond what the purpose of this hearing is, which is to show changes. The original condition has already been established with the Commission, and expressed by the Commission in its report. It seems to me we might save some record, because this would be merely repetition as to what the condition was at that time. It is already before the Commission. It seems to me the thing to do would be to let him state what the changes have been.

Mr. BURCHMORE. I can only ask the questions that appeal to my intellect. It does not strike me that any evidence taken in 1932 tends to prove what the condition was in the year 1936. The Commission's decision was in 1936, and the Commission had no information imparted to it in any regular manner subsequent to the hearing in 1932. I do not want to start any controversy. I am not trying to reopen an old situation. You have to say some things as introductory to the proof which we are putting in of changes.

Exam. KING. Go ahead, Mr. Burchmore. I just did not understand about those five railroads.

Mr. BURCHMORE. Very well.

13 By Mr. BURCHMORE:

Q. At the present time what railroad or railroads bring cars of inbound interstate freight to the plant?

A. The Wabash Railway.

Q. That is the only railroad that brings cars to your plant?

A. Yes.

Q. The Wabash Railway—you use that term as referring to the railroad operated by the trustees or receivers?

A. That is right.

Q. It is popularly known as the Wabash Railway?

A. That is right.

Q. Have you a map of the tracks at the plant of A. E. Staley Manufacturing Company and at the adjacent plant of the Mississippi Valley Structural Steel Company and various of the yards and tracks of the Wabash Railway adjacent to those plants?

A. I have; yes, sir.

Q. Was this map prepared by the engineering department of the A. E. Staley Manufacturing Company at your direction and request?

A. It was; yes, sir.

Q. Is this map in your opinion and according to your knowledge true and correct as of the present time?

A. It is; yes, sir.

Mr. BURCHMORE. We will ask that this be marked for identification as "exhibit No. 2."

Exam. KING. It may be so marked.

14 (Exhibit No. 2 identified.)

By Mr. BURCHMORE:

Q. Now, explaining this map, exhibit No. 2 for identification, Mr. Burwell, what are the tracks which appear to be very numerous that are colored in red?

A. The tracks shown on this blueprint in red are the tracks of the Wabash Railway.

Q. Now, are these—strike that. To the north of the Staley plant is an area that is marked "Locomotive Shops, Wabash Railway Co."

A. Yes.

Q. What is that area?

A. That is the system locomotive shops of the Wabash Railway.

Q. And immediately to the east of that area is what?

A. That is the system car shops of the Wabash Railway.

Q. With reference to these tracks shown in red extending from east to west, are those yard tracks of the Wabash Railway used in its general business?

A. They are both yard tracks and main line tracks.

Q. The main east and west running tracks are shown here across the blueprint?

A. That is right.

Exam. KING. Just a moment.

By Exam. KING:

Q. Where would that main running track be, Mr. Burwell?

A. Well, if you go out here to Brush College subway——

15 Mr. BURCHMORE. At the extreme right.

The WITNESS. At the extreme right of the blueprint, you will see the two main tracks there. They run all the way through the yards. Those are the main line tracks from Chicago to St. Louis and from Detroit to St. Louis.

By Mr. BURCHMORE:

Q. According to your knowledge, is there a great amount of switching performed in Decatur in respect of through cars moving in over one division and out over another division of the Wabash Railway?

A. There is an unusual amount of switching at Decatur due to the fact that their own shops are located there, and because of interchange traffic with the other lines, and also because of the fact they have their Chicago–St. Louis line and Detroit–Hannibal line and also their ice house there. I would say there is a very considerable amount of switching in those yards.

Q. At the extreme right hand of this map you show an industry, Shellabarger Grain Products Company.

A. That is right.

Q. At the extreme west end of this map is a designation "Baltimore & Ohio Railroad Connection."

A. That is right.

Q. Is that the connection of the Baltimore & Ohio Railroad with the Wabash Railway?

A. No, sir. The interchange of the Baltimore & Ohio Railroad and Wabash Railway is down near the passenger station,

16 which is shown in the first map, exhibit No. 1.

Mr. BURCHMORE. At this time I would like to direct attention to the map marked as "exhibit No. 1" for identification. May that be unfolded? I think perhaps if we just unfold it once, Mr. Thomas, it would be sufficient.

By Mr. BURCHMORE:

Q. Can you point out the places shown on this blueprint where cars are received by the Wabash Railway from other railroads when consigned to the Staley plant, received in the city of Decatur?

A. On the map——

Q. Exhibit 1?

A. Exhibit 1, at a point known as the Illinois Central Depot and the YMCA.

Exam. KING. Can you not mark that point "1" on that one map?

Mr. BURCHMORE. I think if he marked it "A", it would avoid confusion. Mark it with a large A, Mr. Burwell.

The WITNESS. The point marked with a black A, YMCA, is the interchange tracks of the Illinois Central and Pennsylvania Railroads with the Wabash Railway.

Mr. MITTEN. Is that the point of interchange at the present time, or what time are you talking about?

Mr. BURCHMORE. Now.

Mr. LA FORGEE. Now.

Mr. BURCHMORE. We are talking about now.

17 Mr. MITTEN. All right.

The WITNESS. That is the present situation, showing the current interchange tracks which are the same interchange tracks as cars would be interchanged on going to Buffalo, New York, from Pana, Illinois.

By Mr. BURCHMORE:

Q. When the Illinois Central brings into Decatur a car of interstate freight intended for the A. E. Staley Manufacturing Company, the Illinois Central gives that to the Wabash between the YMCA and the Illinois Central depot, at point A?

A. That is correct.

Q. If a car comes in over the Illinois Central, which is going to some other concern on the Wabash either at Decatur or elsewhere on its line, does the Illinois Central according to your information give that car at that same point to the Wabash?

A. It does.

Q. From that point cars are moved by the Wabash engine to the Staley plant?

A. That is right.

Q. What is the next railroad that you will mention?

A. The Baltimore & Ohio interchange is just below that, marked with a letter B.

Q. Just a short distance from the first interchange A, is the Baltimore & Ohio interchange B?

A. It is south of the main line, and the Illinois Central

18 is north of the main line.

Q. With reference to these interchange points A and B, are they perhaps one-half mile from the A. E. Staley Manufacturing Company plant, or one-quarter of a mile, or what distance?

A. Roughly I would judge that they are about one-half mile.

Q. What is the next interchange point that you wish to mention?

A. The next interchange point is approximately at Fairview Avenue. That is the interchange with the Illinois Terminal, which I will mark for identification with the letter C.

Q. Is that at the extreme left of the map, or the extreme west of the map?

A. That is the extreme west of the map, between McClellan and Fairview Avenues.

Q. Is that a mile or two from the A. E. Staley Manufacturing Company plant?

A. I would say it must be three or three and a half miles from the Staley plant.

Q. Is that west or east of the plant, the Illinois Terminal junction?

A. That is west of the plant.

Q. At the extreme west?

A. The extreme west of the city.

Q. Are there industries situated along this track between the extreme west where the Illinois Terminal interchange is located and the A. E. Staley Manufacturing Company plant?

19 A. There are; yes, sir.

Q. You have not given the Pennsylvania, have you, the Pennsylvania connection?

A. Yes.

Q. What was that?

A. The Pennsylvania and the Illinois Central are one and the same.

Exam. KING. Off the record.

(Discussion outside the record.)

Exam. KING. Back on the record. Proceed, Mr. Burchmore.

By Mr. BURCHMORE:

Q. At the extreme right of the map is the Shellabarger Grain Products Company shown?

A. There is a track leading in there, but the plant of the Shellabarger Grain Products Company is not shown. It is located on what is known as the C. Y. Miller 1st addition.

Q. Will you mark with the letter D the point on this blueprint where the Illinois Central, the Illinois Terminal and the Pennsylvania traffic in 1936 came into your property.

A. Right at Brush College Road, marked D.

Q. This point D is near the right hand end, the extreme right hand or eastern end of this blueprint?

A. That is correct. It is.

Q. Is the track running in at D any longer in use?

A. The track over which the Illinois Central, the Illinois Terminal and Pennsylvania Railroad handle cars into our

20 plant is no longer in service.

Q. This point D which you have just referred to is a very short distance south of the Shellabarger Grain Products Company, is it not?

A. A very short distance; yes, sir.

Q. Now in order that we may orient ourselves, does this map show the manufacturing and industrial section of Decatur in full?

A. So far as it is located along the Wabash Railway; yes, sir.

Q. What percentage or proportion of the industries at Decatur in your judgment, roughly, are on the Wabash and along the tracks here shown?

A. I would say the principal tonnage producing industries are located along the Wabash Railway.

Q. Would you say 50 percent, 80 percent, or 90 percent?

A. 75 to 80 percent of the tonnage producing industries.

Q. Referring again to the map, exhibit No. 2 for identification, what are the tracks which are colored with yellow on the map?

A. The tracks that are colored yellow are tracks that have been taken out of service.

Q. Since 1936?

A. That is correct.

Exam. KING. Just a moment, please.

By Exam. KING:

Q. Is this it here (indicating)?

A. That is one of them.

21 Exam. KING. Let us identify them a little more particularly, Mr. Burchmore. There are yellow and white both.

The WITNESS. We will go to Brush College Road. The track that was formerly the service track of the Illinois Central, Pennsylvania and Illinois Terminal has been taken out of service. That is marked in yellow from Brush College Road west.

By Exam. KING:

Q. That is still in place, is it?

A. It is still in place, but unsafe for operation without some work being done on it.

By Mr. BURCHMORE:

Q. It is spiked at the western end of it with an obstruction that would prevent engines from moving over it?

A. It has been spiked, and the Wabash Railway has subsequently built a connection into that track at the extreme west end, which is shown in red.

Q. Go ahead, Mr. Burwell.

A. The next tracks out of service are at building 29, which is the oil refinery, immediately east of 22nd Street. There are two tracks to the north of building 29.

Q. Just a little above the word "Mfg.," in the name "A. E. Staley Mfg. Co." on this map?

A. Yes. At Woodford Street at the left of the map is a yellow track on which Baltimore & Ohio Railroad empties were formerly stored. That is the southern track at that point.

Exam. KING. Read the last answer of the witness, please,
22 Mr. Reporter.

(Answer read.)

Exam KING. Go ahead

The WITNESS. Immediately north of that track is another track marked in yellow that had been taken out of service due to the fact that cars are not classified in our yard.

By Mr. BURCHMORE:

Q. Since 1936?

A. Since 1936. Also, at No. 20 building the track which we call the Island track, which was a run-around track, has been taken out of service since 1936.

Exam. KING. I think if we had these tracks marked with a pencil or something it would be a lot easier to follow, and it would make it very much more clear.

The WITNESS. There is a legend at the bottom that says "Taken out of Service."

Exam. KING: How many of them are there altogether?

Mr. BURCHMORE. I do not attach any importance to their particular identification.

Exam. KING. All right. Go ahead.

Mr. THOMAS. They appear in yellow on the plate and he describes them with reference to some adjacent buildings. I believe the record is reasonably clear on that.

Exam. KING. Very well. Go ahead.

The WITNESS. I would also at this time direct your attention to a short piece of track immediately east of Woodford
23 Street, just south of the yellow line north of the Baltimore & Ohio Railroad right of way, which is marked "M. V. S. S. Co. connection." We have no use for that particular track. That is merely a portion of track that the Wabash Railway used that belongs to the Staley Company, in serving the Mississippi Valley Structural Steel Company.

By Mr. BURCHMORE:

Q. Does the Staley Manufacturing Company have any interest in or relationship to the Mississippi Valley Structural Steel Company?

A. It does not.

Q. Have you personally or individually any connection whatever with the Mississippi Valley Structural Steel Company?

A. I have not.

Q. They are simply neighbors?

A. That is right.

Q. And the Staley Company is at the present time the owner of a track just north of the Baltimore & Ohio Railroad right of way which the Wabash Railroad is using to get into the Mississippi Valley Structural Steel plant?

A. That is correct.

Q. As to that track, the Staley Company is making no use of it, itself?

A. The Staley Company is making no use of that track itself. They are maintaining it for the use of the Wabash Railway.

Mr. STRASSER. May I ask Mr. Burwell one question?

24 Mr. BURCHMORE. Yes.

By Mr. STRASSER:

Q. Mr. Burwell, that is the portion of the track over which the Wabash has a perpetual easement for the purpose of reaching the Mississippi Valley Structural Steel Company, is it not?

A. The Wabash Railway, Mr. Strasser, had a perpetual easement over a portion of our property. They have never built any tracks over that easement by reason of the fact we were handling cars for your account and the other roads into the Mississippi Valley Structural Steel plant, and there was no reason for you to build a track. When we ceased operating our engines, either one of two things had to happen: you had to use our existing tracks, or you would have to build tracks over and along that easement.

Mr. BURCHMORE. Let me ask you this, Mr. Burwell——

Mr. STRASSER. Just a moment.

By Mr. STRASSER:

Q. The Wabash formerly did have a track of its own serving the Mississippi Valley Structural Steel Company plant?

A. I think you had, Mr. Strasser, a track running south and east across the Staley property which interfered with the development of its yard.

Q. What is now the Staley property?

A. What is now the Staley property.

Q. That was on land owned by the Wabash?

25 A. That was on land owned by the Wabash and acquired by the Staley Company; in lieu of your giving up that track, they gave you an easement paralleling the Baltimore & Ohio Railroad right of way.

Q. When that land was granted or deeded to the Staley Company, that track that the Wabash formerly used, going down to the Mississippi Valley Structural Steel Company, was taken up?

A. That was taken up, yes, sir.

Mr. BURCHMORE. Are you through?

Mr. STRASSER. Yes. Thank you.

By Mr. BURCHMORE:

Q. Near the center of this blueprint is a locality marked "A. E Staley Manufacturing Company, Elevator C, Building 28."

A. That is right.

Q. What character of traffic moves in and out of that section of your plant?

A. The only traffic moving to and from elevator C is corn, soy beans, wheat and oats.

Q. Is that elevator C situated some distance away from the remainder of the Staley plant?

A. It is between one-quarter and one-half a mile.

Q. Is that a large elevator?

A. It has a capacity of three and one-quarter million bushels.

Q. Was it built as a merchant elevator?

A. It was built primarily for a merchandising house.

26 Q. Have you prepared a blueprint showing on a larger scale the maps of the—or rather, I should say the tracks and buildings at and adjacent to elevator C?

A. I have.

Mr. BURCHMORE. I will ask that this map be identified as exhibit 3.

Exam. KING. It may be so identified.

(Exhibit No. 3 identified.)

Mr. THOMAS. What number exhibit will this be?

Mr. BURCHMORE. Three.

Mr. THOMAS. Three. Thank you.

By Mr. BURCHMORE:

Q. Referring to this blueprint, exhibit 3 for identification, describe the tracks that are shown thereon.

A. At elevator C are the four tracks north of the elevator which are known as unloading tracks serving the receiving pits. There are four tracks south of the workhouse which are known as loading tracks.

Q. Now, speaking of the north tracks, first, are those the tracks on which grain comes in for unloading?

A. That is right.

Q. What service does the Wabash Railway give you as to this inbound grain?

A. These tracks north of the workhouse, east of the receiving pits, hold approximately 15 cars each. Cars are placed on these tracks. Each of the tracks are served with car pullers.

27 There are four car pullers, one for each track, and the cars are pulled down as they are unloaded.

Q. Does the Wabash Railway pull those down as they are unloaded?

A. No, sir.

Q. Who does that?

A. Our employees at the elevator.

Q. Does the Wabash place a string of cars, five, ten or fifteen, in one solid string on one of those tracks and go away and leave them?

A. They do.

Q. Do they place those cars at any particular spot or place for your convenience?

A. They do not.

Q. How are the cars physically unloaded? What is the method of getting the grain out of the cars?

A. Well, they have pits which are indicated on the map as receiving pits. These cars are placed over the receiving pits and the grain doors are lifted with air pressure, and the grain falls out into the pit. Then a man goes into each end of the car with a home-made contraption and pulls the grain to the door and out into the pit.

Q. That home-made contraption to which you referred is something like a snow shovel?

A. That is right. It has the appearance of a snow shovel.

Q. Who puts the cars in position over these receiving pits?

28 A. After the first car is made empty, the others are pulled down with a car puller. There might be 14 or 15 cars on each of those tracks to be pulled down with a car puller.

Q. These car pullers are owned, operated and manned by the Staley Company?

A. That is correct.

Q. After the car is made empty, the car puller pushes them out, beyond?

A. The car puller pushes them out, away from the receiving pits, west of the receiving pits.

Q. What about loading grain?

A. Grain is loaded at the south of the workhouse, on three tracks there, which hold seven cars each. After a car is loaded, then the subsequent empties for loading are pulled down for loading by car pullers. There are three cars on the south side of the elevator workhouse.

Q. You mean, three tracks?

A. Three tracks, I should say.

Q. What does the Wabash Railway do with regard to outbound movements of grain? What service does the company perform?

A. All the Wabash does on outbound movements of grain is pick it up on tracks east of the workhouse and take it into their makeup yard, which is immediately adjacent to our right of way line shown here at the foot, the broken line.

Q. They remove cars in solid strings?

29 A. That is right.

Q. And take them out?

A. That is right.

Q. How much of your traffic in a representative period, say the year 1937, was grain inbound or outbound, which was loaded or unloaded at elevator C, as you have described it?

Exam. KING. Before we go into that, Mr. Burchmore, may I ask a question?

Mr. BURCHMORE. I would like to get the answer to that question first, Mr. Examiner.

The WITNESS. In 1937 we unloaded into the elevator 9,400 cars of corn, beans, oats and wheat.

Exam. KING. Let me ask you this:

By Exam. KING:

Q. Where did you say the Wabash took these cars that were loaded with grain?

A. Into their makeup yard.

Q. Which is outside of your property?

A. It is—this is our property line here [indicating].

Q. The broken line?

A. The broken line is the right of way line; yes. They take them right off of these tracks a few blocks over here, a few hundred feet into their makeup yard.

Q. Well, a while ago you said something about this being a merchandising elevator.

A. Yes.

30 Q. What did you mean?

Mr. BURCHMORE. He said it was built as such.

The WITNESS. Do you want this on the record?

Exam. KING. Yes.

The WITNESS. Speaking of a merchandising elevator, we grind corn and soy beans. We also merchandise grain, where we bring in corn and ship out corn, or bring in wheat and ship out wheat, or bring in oats and ship out oats. We do not process any wheat or any oats, only corn and soy beans.

Exam. KING. Go ahead, Mr. Burchmore.

By Mr. BURCHMORE:

Q. With regard to this inbound movement of grain and outbound movement of grain, is it a matter of any interest or concern to the A. E. Staley Manufacturing Company what the Wabash Railway does with those cars before and after they come to your plant, and how they handle them?

A. It is no concern of the A. E. Staley Manufacturing Company as to how they handle them either before or after. I might also say that I did not finish answering your other question.

Q. All right.

A. You asked about the outbound grain and the inbound grain, and I only gave you the inbound.

Q. All right. You said there were 9,400 cars inbound.

A. That should be 9,437 cars inbound.

Q. All right.

A. Outbound, 563 cars of corn; 21 cars of oats; 24 cars
31 of wheat; 26 carloads of soy beans.

Q. That totals about 634 cars, as I add them.

A. Yes.

Q. How do these figures for 1937 compare with the year 1936?

A. They show a material reduction as compared with 1936.

Q. Now, then, have you prepared a blueprint showing the tracks at your soy bean plant, so-called?

A. I have.

Q. Is this it?

A. That is it.

Mr. BURCHMORE. We ask that this map be identified as exhibit No. 4.

Exam. KING. It may be so identified.

(Exhibit No. 4 identified.)

By Mr. BURCHMORE:

Q. Describe the tracks on this blueprint and state what freight is loaded and unloaded on these tracks.

A. At the top of the map is one track which serves the soy bean elevators. They are small plant elevators having a total capacity of about 210,000 bushels of soybeans. The capacity of that track is 15 cars, there usually being one spot in 24 hours. There is a car puller there which handles the cars after unloading, one at a time. You can only have three spots in there.

Q. Does the Wabash place cars on that track in position for the unloading of each car?

32 A. The track has a capacity of 15 cars. There might be three left in place for unloading, and the other 12 would be pulled down by the car puller.

Q. Do they put in the 10 or 12 cars received inbound, in one string?

A. We have one spot there in 24 hours.
Q. They are put in, in one string?
A. One string.
Q. Without disconnecting the cars?
A. That is correct.

By Exam. KING:

Q. What track would the Wabash put those cars on, on your exhibit No. 2?
A. This building which shows as 22, legend 22 on exhibit 2——
Q. Directly south of the letters "ab" in the word "Wabash"?
Mr. BURCHMORE. Exactly.
The WITNESS. Yes—that is, the first track south of the right of way line, which is the broken line.
Mr. BURCHMORE. You will see there a number of small round circles. Those are the soybean elevators which are indicated as circles also on exhibit No. 4.

By Mr. BURCHMORE:

Q. Is that correct, Mr. Burwell?
A. That is correct.

By Exam. KING:

Q. Which track would they use? Which track would the Wabash set them on?
A. The south track. There are two tracks. The other
33 track is a run-around track.
Q. The one next to the elevator?
A. That is right.
Exam. KING. Proceed, Mr. Burchmore.

By Mr. BURCHMORE:

Q. What are the other two tracks shown on this exhibit No. 4, on each side of the soybean warehouse building, No. 48?
A. The south track, which also has a car puller, has a capacity of 10 empty cars. There are 4 of these cars which would be spotted for loading. The other six would of necessity have to be spotted with a car puller. We load approximately 20 cars of soybean products in 24 hours. Therefore, the track is spotted with 10 empties twice in 24 hours.
Q. You say the track is spotted with 10 empties. What do you mean? What is the physical work done?
A. Cars are placed on the track. Only four out of 10 cars are spotted, or out of the 20 cars placed on the track in 24 hours, only 8 of them would be placed for loading.
Q. Are the cars specifically spotted, or are they just all shoved in, in one string and left there? Describe just what occurs, and how they come to rest.

A. The cars are pushed in on this track and I think the Wabash endeavors to place the four cars available for loading.

Q. Well, now, suppose 10 cars are brought to this section of the plant at one particular time by a Wabash engine.

34 A. Yes.

Q. Are those 10 cars pushed in, backed in, or what?

A. It is my understanding that they are pushed in from the west end, into that plant.

Q. Now, when they are pushed in, do they come to rest in one unbroken string, or what else is done?

A. They push in the ten cars at one time, and they are pushed to the—the eastward car would be over at 47 building, and the 10 cars would come to rest with four of them alongside of 48 building.

Q. Is the construction of the tracks and buildings such that when the cars come to rest in this string, some of them are in a position for loading or unloading?

A. That is correct. Four out of ten would be in position for loading or unloading.

Q. That is what you mean by those cars being spotted?

A. That is correct.

Q. What freight in the year 1937 did you ship out and receive in on these three tracks here shown? Could you give us the statistics in that connection?

A. We loaded 4,245 carloads of soybean meal at 48 building.

Mr. THOMAS. How many was that?

The WITNESS. 4,245 cars.

By Mr. BURCHMORE:

Q. Were there received inbound any cars of soybeans or

35 other articles moving from interstate origins to these three tracks, or are purely unloading, outbound tracks?

A. This track south of 48 building?

Q. I am speaking now of the three tracks collectively shown on exhibit 4 for identification; the northmost track is used for inbound traffic, is it not?

A. The north track is used for inbound traffic and for the unloading of soybeans only.

Q. Now, how many—go ahead.

A. The great majority of those beans were intrastate. They might possibly have had a few cars from Iowa, but the total number of cars of beans unloaded was 3,475 cars.

Q. You have made no distinction in your statistics as to whether those are state or interstate movements?

A. I have not. I want to say also, Mr. Burchmore, that part of those beans were probably unloaded at the large elevator east

of the city, due to the capacity of this. They would be unloaded here, if there was any place in these elevators, and if not, in the large elevator east of the city.

Q. Do you have a large inbound movement of coal?

A. We do.

Q. Have you prepared a map showing tracks on which coal is received and unloaded?

A. I have.

Mr. BURCHMORE. I will now ask, if the Examiner please,
36 that this be marked as "exhibit No. 5."

Exam. KING. It may be so marked.

(Exhibit No. 5 identified.)

By Mr. BURCHMORE:

Q. What was the volume of inbound movement of coal in 1937?

A. In 1937 we received inbound 4,562 carloads of coal.

Q. How many was that?

A. 4,562.

Q. What are your unloading facilities and methods of handling coal and what are the tracks on which it is handled?

A. The tracks on which coal is handled are indicated on the map labeled "Coal Dock." The coal is unloaded from hopper cars into a receiving pit.

Exam. KING. Just a moment there.

By Exam. KING:

Q. Where is this coal dock shown on exhibit 2?

A. This is the coal dock here [indicating].

Q. Yes; but where is it on the map, exhibit No. 2?

Mr. BURCHMORE. It is almost immediately south, is it not, of the tracks, you have been speaking about in connection with exhibit No. 4?

The WITNESS. Immediately south of the tracks serving building 47 and building 48.

Mr. BURCHMORE. Just above the letter "t" in the word "Staley."

Mr. THOMAS. Has it a designated number on exhibit 2?

37 Exam. KING. Off the record.

(Discussion outside the record.)

Exam KING. Back on the record.

Mr. BURCHMORE. It is south of 47 and 48.

By Mr. BURCHMORE:

Q. About how many cars of coal does the Wabash bring to this plant at one pull, or one time?

A. The average spotting of cars on that track is—the average number of cars unloaded in a 24 hour period is 11 when the plant is in full operation.

Q. Are those cars pushed in in one string and left there?

A. No. They usually bring in coal twice a day. In their subsequent operation they place one car at the receiving hopper, and the subsequent operation is by a car puller.

Q. Who places them in position for unloading over the receiving hopper?

A. When the cars are brought in by the Wabash engine, they usually place one car in a position to be unloaded, or over the receiving hopper, and the others are pulled down by car puller. We only unload there in one shift. The men working at the coal dock only work from 7 A. M. to 3:30 P. M.

Q. You place them in a position for unloading with a car puller then, do you?

A. Yes; other than the one car that might be placed in a position for unloading in each cut, there being two cuts of coal daily.

38 Q. Is that coal of different grades and from different districts so it has to be separated as to one kind of coal and another, like a retail merchant does?

A. No. It is all one grade of coal.

Q. It makes no difference to A. E. Staley Manufacturing Company whether one car is unloaded at a particular place as against another car?

A. It does not. We buy coal from mines on the Illinois Terminal, the Illinois Central and the Wabash. It does not make any difference which car is placed first.

Exam. KING. What kind of coal do you use?

The WITNESS. Illinois screenings.

Exam. KING. Screenings?

The WITNESS. Yes.

By Mr. BURCHMORE:

Q. Have you a map of your tracks serving the feed house and feed elevator?

A. Yes.

Mr. BURCHMORE. We ask that this map be identified as exhibit 6, if the Examiner please.

Exam. KING. It may be so identified.

(Exhibit No. 6 marked for identification.)

Exam. KING. Where is this located on your big map, Mr. Burwell? Off the record.

(Discussion outside the record.)

Exam. KING. Proceed.

39 By Mr. BURCHMORE:

Q. Where are these tracks on the map exhibit No. 2?

A. On exhibit No. 2 they are marked 9, 12 and 32.

Q. That is just to the left of 32nd Street where the viaduct of 32nd Street goes through your plant?

A. It is immediately to the left or west of the overhead viaduct, yes.

Mr. THOMAS. 22nd Street?

Mr. BURCHMORE. 32nd.

The WITNESS. No. I think it is 22nd.

Mr. BURCHMORE. 22nd, yes.

By Mr. BURCHMORE:

Q. Are these tracks used for inbound or outbound traffic?

A. They are used for outbound traffic, except that we do unload an occasional car of inbound bags.

Q. What would the volume of outbound movement be of analagous products from the loading points on these tracks shown on exhibit No. 6?

A. We load at that building corn gluten feed in bulk and corn oil meal in bags. The total movement of corn gluten feed was 3,095 cars, and of corn oil meal 226 cars, a total of 3,32. cars.

By Exam. KING:

Q. Now, is that the spur that is used to serve that feed house?

A. That is the through track. The through track with a car puller is indicated on the map.

Q. What do you use the spur for?

A. That spur is for the loading of bulk corn oil meal and for the loading or soya sauce.

Q. All of your inbound traffic would be unloaded on the through track, is that right?

A. A car of inbound bags is the only thing that would be unloaded, and it would be placed in there with the empties for outbound loading.

By Mr. BURCHMORE:

Q. Those are principally loading tracks?

A. They are loading tracks solely, except for an occasional car of bags that may come in on that track.

Q. Are the cars classified? Do you have one type of car for one shipment, and another type of car for another shipment out of that point?

A. No. It is all the same type of loading out of that plant, so a car would be suitable for any particular type of loading out of that plant.

Q. Any empty will do for any use, broadly speaking?

A. Any merchandise car or what we call bag loader is suitable for that.

Q. Are there loading platforms along the feed house and elevator?

A. Just north of this building marked "Feed Warehouse" there is a platform, sort of an odd-shaped platform that serves
41 the warehouse there.

Q. Your car puller places cars in the exact position where required for loading?

A. That is right. We have two spots there during a 24-hour period, or two placements of cars on that particular track in 24 hours.

Q. Have you prepared a blueprint of the tracks, facilities, and buildings known as 20, 16, and 17?

A. I have.

Mr. BURCHMORE. If the Examiner please, I ask that this be identified as exhibit 7.

Exam. KING. It may be so identified.

(Exhibit No. 7 marked for identification.)

By Mr. BURCHMORE:

Q. What are these buildings, 16, 17, and 20?

A. No. 20 building is the starch packing house. That is where all of the bulk starches and package starches are packed and loaded with the exception of the thin boiling or so-called modified starches, which are produced in 17 building.

Q. Where are these buildings located on the map exhibit No. 2?

A. On exhibit 2 they are adjacent to the viaduct at 22nd Street running westward from the viaduct.

A. Are these your principal tracks for the loading of out-bound shipments of packaged goods?

A. All of our out-bound loading of packaged goods with the exception of feed and corn oil meal are loaded from these three
42 buildings.

Q. What was the volume of traffic shipped out from these buildings in 1937?

A. I will have to do a little tabulating here. I will have to combine the loading at 16 and 20 buildings, that is, the starch buildings.

Q. You can combine 16, 17, and 20 as far as that is concerned?

A. 16 and 20 are the starch buildings.

Q. Very well. Go ahead.

A. There were 3,505 cars loaded out-bound from buildings 16 and 20 in 1937. From building No. 16—or rather, building No. 17—there were 2,600 cars loaded out-bound.

Q. So that was in the neighborhood of 6,000 cars.

A. From those three buildings there were 6,165 cars loaded out-bound in 1937.

Q. Are there long loading platforms at these buildings?

A. At 16 building—let us go back just a minute. At 20 building—take 20 building: on the south side of 20 building, which is at the bottom of the map, there is capacity for six cars.

Q. Do those cars have—pardon me. Finish your answer.

A. On the north side there is capacity for seven cars.

Q. Do those cars have to be placed right at a particular spot, each one?

A. They do not.

43 Exam. KING. He did not answer your question about the platforms, Mr. Burchmore.

By Mr. BURCHMORE:

Q. Is it a long, continuous platform, or does the car door have to be opposite a particular exact spot?

A. There is a platfom along each side of the building, of all those buildings, which is indicated by a single line after the double line; both south of the platforms and north of the platforms are loading tracks. Everything is trucked onto the loading platforms with little trucks.

Q. The cars can be placed in a continuous string of six or seven cars opposite building 20 and loaded from platforms not exactly opposite the door, is that correct?

A. That is correct.

Q. Is that true in a general way of 16 and 17 buildings also?

A. That is true generally of building 16 and building 17 also, yes, sir; except that at 16 building we load only on the north side. There is capacity there only for the placement of six cars at one time.

Q. But it is the same kind of platforms and same kind of placement?

A. The buildings are identical, yes, sir; practically, so far as loading is concerned.

Mr. THOMAS. May I interrupt to ask one question there, Mr. Burchmore?

Mr. BURCHMORE. Yes.

44 By Mr. THOMAS:

Q. Is it not a fact, however, that cars are stopped so their doors are opposite the doors of the warehouse when loading is taking place?

A. I do not spend a great deal of time out on the loading platforms. I am not sure whether it is true or whether it is not true.

Q. It would be desirable for them to be so placed, would it not?

A. Probably it would.

Q. To save moving the commodity?

A. This stuff is trucked out on little motor trucks on the platforms.

Q. Yes.

A. It is trucked out either to the door or out on the warehouse platforms.

Q. If the cars are placed as I have indicated, there would be less movement of those motor trucks, would there not, Mr. Burwell?

A. It might mean a few feet, one or two feet. It would not be material.

Mr. BURCHMORE. Let us examine into that as an exact fact.

By Mr. BURCHMORE:

Q. I want to know whether at this building there is this condition, viz, that there are certain doors in the building opposite which doors it is desirable or necessary that the cars should be placed with the car doors opposite the building doors? In other words, is exact placement in any way desirable or necessary? Is exact placement a desirable or necessary thing?

45

A. Exact placement is not necessary, Mr. Burchmore. As I say, exact placement might save a few feet of truck movement, but the cars can be reached without exact placement.

Q. Were the buildings constructed with any thought as to convenience of solid cuts of cars going in there?

A. I might direct your attention to the fact that the A. E. Staley Manufacturing Company is one of the youngest of all corn products industries. These buildings have all been constructed in 1920, or subsequent thereto. They were constructed with a view of requiring the smallest amount of service in placing cars for loading. You will notice the buildings are all on a line. The platforms are all on a line, and the same tracks serve all of those buildings. We load at those buildings what we call our principal products, which are syrup, sugar, corn syrup and unmixed starch. Feed and oil are byproducts of the products shipped from these three buildings.

Exam. KING. We will take a five minute recess.

(Short recess.)

Exam. KING. You may come to order, gentlemen. You may proceed, Mr. Burchmore.

By Mr. BURCHMORE:

Q. Have you prepared, Mr. Burwell, a blueprint of the tracks at the oil refinery?

A. I have.

Q. When was this oil refinery constructed, and when did it go into operation?

46

A. In the early part of 1937.

Q. Subsequent to the Commission's order of 1936?

A. That is right.

Mr. BURCHMORE. We ask that this map be identified as exhibit No. 8.

Exam. KING. It may be so identified.

(Exhibit No. 8 marked for identification.)

By Mr. BURCHMORE:

Q. The tracks at the oil refinery are how many in number? I am speaking of these which are in actual use.

A. There are two tracks, one north and one south of the oil refinery and storage tanks.

Q. Are anything but tank cars loaded or unloaded on these tracks?

A. Yes. We load both tank cars and box cars. Tank cars are loaded from the storage tanks and the tank-car loading racks are indicated on the blueprint south of the loading track.

Q. Are those racks constructed so that cars would have to be given exact placement, or are the racks continuous?

A. There are continuous racks. You will notice that there are 12 pipes for loading on the south side of the storage tanks, and six for tank car loading on the north-side of the storage tanks.

Q. Can you state how many cars came in and out of this
47 refinery in 1937? As I understand it, it was only in operation for a very few months.

A. It went into operation in the late spring or early summer of 1937.

By Exam. KING:

Q. Is this shown on exhibit No. 2, Mr. Burwell?

Mr. BURCHMORE. Yes.

The WITNESS. It is right here (indicating).

Exam. KING. Oh, yes. I see it.

By Exam. KING:

Q. It is east of the viaduct, is that correct?

A. East of the viaduct.

Mr. THOMAS. That is building 29, is it not?

Exam. KING. Yes.

Mr. BURCHMORE. That is correct.

The WITNESS. I want the record to show that we handled outbound 389 carloads of corn oil and 629 carloads of soybean oil in 1937.

By Mr. BURCHMORE:

Q. The particular tracks shown on exhibits 3 to 8, inclusive—with reference to those, what proportion of your in-bound and

out-bound traffic is handled on those tracks covered by exhibits 3 to 8, inclusive?

A. Practically 100 percent.

Q. Outside of the commodities you have mentioned, how many carloads in 1937 did you have of manufacturing and packing supplies and construction materials, in general?

A. In 1937 we handled in-bound 813 cars of miscellaneous
48 manufacturing and packing supplies and handled in-bound 138 cars of corn and soybean oil. There were 191 cars of new construction or maintenance materials.

Q. These conditions which you have described, the physical conditions, and the matters of the handling of the traffic and the location of the tracks—do these cover changes which have occurred since 1936?

A. They do; yes, sir.

Q. At the present time and for a year or more past has the Staley Company operated any engine in or about its plant?

A. The Staley Company has not operated any engines in and about its plant since July 8, 1936.

Q. Now, construing the Commission's order of May 22, 1936, as requiring the several railroads to cancel the allowance, I will ask you whether the allowance you formerly received has been cancelled?

A. The A. E. Staley Manufacturing Company has received no allowance for work performed subsequent to July 8, 1936, or have they performed any work.

Mr. THOMAS. That does not answer the question.

By Mr. BURCHMORE:

Q. Does the term "performed"——

Mr. THOMAS. All right. Go ahead.

Mr. BURCHMORE. Do you wish to make an objection?

Mr. THOMAS. Yes. I wish to object to that answer as not responsive, but I see you are proceeding to ask a question
49 which would make the answer responsive, so I will not press my objection.

The WITNESS. I will answer this way: what I had in mind was, we did some work on July 8th, 1936, that we probably did not get the money for until some time subsequent to that date. That is the reason for my answer.

By Mr. BURCHMORE:

Q. Have the tariffs which provided an allowance to the Staley Company been cancelled?

A. It is my impression that they were cancelled; yes, sir.

Q. Keep your voice up, please.

A. I say, it is my impression that they were cancelled.

Mr. BURCHMORE. We believe that to be a fact, but of course the Commission's tariff files will have to be the best evidence of that.

The WITNESS. They will speak for themselves.

By Mr. BURCHMORE:

Q. Since the date of the Commission's order have the railroads filed and published any tariff providing any charge in connection with your traffic which was not made at the time the Commission's report was entered?

A. On October 9, 1937, agent R. A. Sperry issued his tariff No. 79, I. C. C. 376, which was effective on November 15, 1937, which provided a charge of $2.27 per car for the handling of loaded cars to and from the plant of A. E. Staley Manufacturing Company. That charge was subsequently increased effective March 28, under Ex Parte 123, to $2.50 per car.

50 Q. Did you file a protest against that charge with the Interstate Commerce Commission and ask to have it suspended?

A. On October 27, 1937, A. E. Staley Manufacturing Company petitioned for suspension of Agent Sperry's tariff 79 I. C. C. 376.

Q. Was it suspended?

A. It was not.

Q. Have you been paying this charge of $2.27 per car, increased to—what did you say it was increased to?

A. $2.50.

Q. $2.50 on interstate shipments?

A. We have been paying a charge, as provided in the tariff, of either $2.27 or $2.50 on interstate shipments under protest.

Q. Was the same charge and same tariff published by the railroads to apply on intrastate business?

A. It bore an Illinois Commerce Commission number, yes.

Q. Was it suspended by the Illinois Commerce Commission?

A. It was suspended by the Illinois Commerce Commission and is still under suspension.

Q. Was a hearing held by the Illinois Commerce Commission on that matter?

A. Yes.

Q. You testified at that hearing?

A. I did.

Q. Have there been any changes in the freight rate tariffs to and from Decatur since that time, since 1936?

51 A. In what respect? There have been lots of changes.

Q. Have the rates to or from Decatur, the line-haul rates of the carriers, been changed in the way the tariffs read, the pro-

visions in them, or the amounts of the rates, or anything else, other than as parts of general country-wide increases?

A. Well, the milling in transit tariffs of the various lines and some of the switching tariffs have had clauses inserted which provide that rates applying to and from Decatur are subject to agent Sperry's tariff 79 I. C. C. 376.

Q. Have these tariffs had any changes made in them as regards any freight shipped to or from any industry at Decatur other than A. E. Staley Manufacturing Company?

A. Those tariffs only make reference to that one specific tariff and this one specific tariff only relates to traffic to and from the A. E. Staley Manufacturing Company.

Q. Have you had and are you having today a large volume of traffic of grain and grain products and other freight to and from points in other states moving to and from your plant, in carloads?

A. The great bulk of our in-bound grain originates in the state of Illinois. There are some cars that come from Iowa. There is a substantial movement of out-bound products to interstate destinations.

Q. In what state do you—or, I should say, does the A. E. Staley Manufacturing Company do business from its plant at Decatur?

52 A. In almost every state in the Union.

Q. Does the charge in agent Sperry's tariff to which you have referred apply on shipments moving to or from the Shellabarger Grain Company, whose plant is shown on your exhibits Nos. 1 and 2?

A. The charges provided in that tariff do not apply to shipments consigned to or moving from the Shellabarger Grain Products Company.

Q. Is that company a competitor of A. E. Staley Manufacturing Company——

Mr. THOMAS. We object to that, Mr. Examiner. The Commission expressly excluded the allegations of the petition for rehearing based upon alleged discrimination.

Mr. BURCHMORE. I have not finished my question.

By Mr. BURCHMORE:

Q. Is the Shellabarger Grain Company, with a plant at Decatur, Illinois, a competitor, and has it been since 1936 a competitor of A. E. Staley Manufacturing Company in the marketing and shipment of grain products?

Mr. THOMAS. The same objection.

The WITNESS. It is.

Exam. KING. Just a moment, Mr. Burchmore. I suppose this is leading to discrimination, or some other violation of the act in that respect, is it not?

Mr. BURCHMORE. Yes, it is.

Mr. LA FORGEE. May I be permitted to offer one suggestion with relation to that, Mr. Examiner?

53 Exam. KING. Yes.

Mr. LA FORGEE. We want to stay within the order of the Commission in relation to this hearing, which has defined quite clearly what the matter in issue is here now. From that we have no desire to depart, but under the wording, the very wording of that order, it is itself bottomed on rather a broad topic, namely, a change in conditions, which existed with reference to the A. E. Staley Manufacturing Company since the time of the entry of the original order. Now, changed conditions may arise from a good many sources. I am not going into an argument, if the Examiner please.

Exam. KING. Go ahead.

Mr. LA FORGEE. However, it does involve presenting to the Commission the fact that because of certain things which have come to pass, not only in relation to the mere matter of the shifting of a car or train of cars, but if as a result of the change which has been brought about as a matter of economics a condition exists which did not exist, even though it be a change in economic conditions, it is a matter which is very respectfully submitted, should be considered by the Commission. That is to say, here is a competitor immediately next door operating exactly as this company operates. Let us assume for the instant purpose it buys soybeans. It manufactures products from soybeans. It makes feed. It makes oil. It makes flour. Now, if as a result

54 of that order and the condition arising from the time that the original order was entered, this company is placed at a disadvantage, it is a change in the condition which it is very respectfully submitted might be considered by the Commission.

Exam. KING. Mr. La Forgee, that change in condition you speak of woud be bottomed on discrimination, would it not?

Mr. LA FORGEE. As a matter of fact, if the Examiner please, I think perhaps discrimination might be involved, and yet it is rather difficult to say, with all the other elements which go to make up a changed condition. A changed condition which arises in the ability of the competitor to pay a higher price for the grain or to sell his products at a different price, quite independent of the mere question of discrimination—that is a changed condition which puts one at a disadvantage, which is exactly as it would have been had they been permitted to go on and receive the consideration which was being paid before the order was entered. That in a measure was a discrimination in favor of the competitor. The whole matter, as it reaches back through a perfect labyrinth of circumstances, involved a question of dis-

crimination. "Discrimination" is a broad term. It might apply to the railroad company. It might apply to the shipper. It might apply to the competitor. It might apply to the consumer. It is rather difficult to say definitely. I take it, as I construe the order—and I am not complaining about it; I am trying
55 to keep within its bounds and at the same time fathom just how far the question does go—but, if in the analysis which follows it becomes reasonably pertinent under this order that a condition arises from any source has so changed the situation that the Staley Company is entitled to consideration of this question upon the basis of being relieved of that, I would think that the evidence being tangible, it would be open to consideration by the Commission.

Mr. THOMAS. Mr. Examiner, if you will compare the petition which has been filed here and upon which this hearing is being held, you will see that the petition itself sets out or alleges that there has been an entire change of conditions at petitioner's plant. You will find in addition to that, after setting out certain alleged changed conditions, the petition goes ahead and alleges that service is given at certain other designated plants which they allege to be competitors of theirs, and based upon that, it is alleged there is unjust discrimination. Further, it is alleged there is a violation of section 1 of the Interstate Commerce Act, that an unreasonable rate is being charged the A. E. Staley Manufacturing Company. It is further alleged that the fourth section is violated, and the Commission, then, when it comes to make its order, very clearly indicates that it intended to limit this hearing to the alleged changed conditions at the plant, which mean the physically changed conditions that are alleged to have taken place. The purpose of the Commission is very
56 clearly shown to eliminate any consideration of matters which are properly the subject of an original complaint before the Commission, namely, discrimination, unjust charges, or violation of the fourth section. All of those things are things which the Commission very clearly intended to eliminate. I submit, therefore, this line of inquiry should be stopped immediately.

Exam. KING. I think we are going to have to stay very close to the evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery or receipt of cars handled at the Staley plant. I will give you all the latitude I can, but the Commission has very definitely indicated very much what Mr. Thomas has stated, I think. Let us stay just as close to the Staley plant as we can.

Mr. BURCHMORE. I am in hearty agreement with what Mr. La Forgee has said, and quite a reply could be made to Mr. Thomas'

remarks. I am quite well aware of the corrected order of May 2, 1938, under which this matter is assigned for hearing, in which the Commission refers to the Staley Company petition and orders in its concluding paragraph that in all other respects the petition be denied, which means that the Commission will not give us a hearing in the year 1938 as to any of the matters respecting this situation that were brought out in our petition, excepting those
57 set forth in the second paragraph, that is, changes of conditions. However, Mr. Examiner, the Commission's order does not say "Changes in track conditions." It does not say "Changes in physical conditions." It does not say "Changes in operating conditions." It says, "Evidence of changes since the prior hearing in operating or other conditions." The word "other" is rather broad. It takes in a lot of territory, I think. I want to point out to you, not necessarily now as proving any unjust discrimination in violation of section 3, but I think it is proper for us to show that other conditions have changed as well as operating conditions in that a charge now imposed upon the Staley Manufacturing Company not imposed upon the Shellabarger Grain Company results in a complete economic difference between those two companies which did not exist in 1936, concerning which in 1931 when we had a psuedo hearing on these matters we could not have offered any testimony, because this condition did not exist. I want this witness to testify that in buying grain and so forth he competes with Shellabarger and now, as was not the case in 1931 and was not the case in 1936, the condition is that more than the profit on the grain has to be paid by them in a charge which this other company getting the same results of transportation pays nothing for. That is an economic condition, a competitive condition, and an "other" condition. It is a change in "other conditions."

Mr. THOMAS. The Commission in all of these supplemental reports and the report in Ex Parte 104 Part 2 has specifically
58 pointed out reasons why certain particular plants are not entitled to have the carriers do this spotting service and therefore this ground which has just been stated, namely the alleged ability to buy grain at a little better advantage, or to handle it at a little better advantage, is something which the Commission has eliminated from its consideration in such cases. It would involve a consideration of the lay-out, the physical condition and industrial methods carried on at the Shellabarger plant or any other plant which is sought to be compared with the Staley plant. That was undoubtedly the reason that the Commission, not willing in this hearing to go into all of the questions of the propriety of allowance or lack of allowance or the performance of service or nonperformance of service at all of

these alleged competing plants, saw fit to restrict this hearing to the physical conditions at or immediately connected with the Staley plant. I submit the objection should be sustained.

Exam. KING. I am going to try the case on those grounds. The Commission certainly clearly had in mind the changed operating conditions within the Staley plant. We will have to go ahead on that assumption.

Mr. LA FORGEE. If Your Honor please, if I may be permitted to make one more remark, that ruling which your Honor has announced would apply to the same tender of proof which relates to the Decatur Milling Company, Hite Elevator Company and various other grain industries in that particular com-
59 munity, and also the evidence which would disclose they were buying and selling products under circumstances which did not involve the same charge which is now imposed upon the Staley Company, or the same rate; your Honor is holding that evidence would be incompetent also. Is that correct?

Exam. KING. As I understand the Commissioner's order it would be, Mr. La Forgee.

Mr. LA FORGEE. I just simply want to be clear about it. I do not want to be captious about it. I am very frank to say I am more of a tyro in practicing before this Commission than the other gentlemen in the case. The petition it seems to me does not really frame the issues. I infer from what your Honor says, and I think your Honor is exactly right, that the issue framed here is not the petition, but the order of the Commission assigning this matter for hearing.

Exam. KING. I did not understand what you said.

Mr. LA FORGEE. I say, the petition filed is really not the issue which we are trying here now; but the issue which is presented in relation to which the Examiner is making this investigation is fixed by the limitation of the order.

Exam. KING. Yes.

Mr. LA FORGEE. That is the issue before us.

Exam. KING. That is it.

Mr. LA FORGEE. Now, if we approach it from that angle, it seems to me the consideration of that order is a matter which
60 would be governed by the usual rules involving consideration of a similar rule or order entered by any tribunal having reasonable jurisdiction of the subject matter and the parties. In good faith this order is entered under that particular phrasing by the Commission. Personally—what I personally think about it, I grant, is not so very material, except that I am extending it as an assurance of my feeling about it—the order is very clear and very concise: "that the above entitled proceeding

be and it is hereby reopened for further hearing but only to permit the presentation of evidence of changes"—in what? "Changes since the prior hearing in operating"—note the distinction, if your Honor please—"in operating or other conditions." Under the express wording of the Commission they have distinguished and differentiated between operating and other conditions. Apparently it seems to me it is almost impossible to say under the wording of the order that "conditions" does not mean anything but "operations." It says "in operating or other conditions, with respect to the interchange, delivery and receipt of cars handled to or from the Decatur, Illinois, plant of the A. E. Staley Manufacturing Company and to or from the plant of the Mississippi Valley Structural Steel Company." It comes down to a question, if your Honor please—I make no pretention of especial knowledge upon the rulings by this Commission, other than to state: what is the issue framed? That is the thing which has to be de-
61 cided. The mere fact that there may have been a change in operations, in the modification of tracks, a change in switching, or the removal of engines—how would it become material unless growing out of that, the very germ of that act has developed into a condition which puts the Staley Manufacturing Company at a disadvantage in the commercial world—and that with fairness to the carrier at the same time to operate its plant upon a parallel plane with that of the competitors or the people with whom it is engaged. I ask your Honor's pardon for having broken in as I have, but I am submitting it very sincerely.

Exam. KING. All right, Mr. La Forgee. I have given you my understanding of this order. There may be some difference in opinion as to what the word "other" means, but it can mean very many things, and taken in connection with this petition and the things which the Commission denied and the language of the order, we will have to restrict this to the order, as I have said.

Mr. LA FORGEE. Very well.

Exam. KING. You may proceed, Mr. Burchmore.

By Mr. BURCHMORE:

Q. Since the Commission's report and order of May 22, 1936, and during the past year, have you endeavored as an officer of the Staley Company to cooperate with the officers of the Wabash Railway and other carriers serving Decatur in any and all matters that have been brought to your attention, or which occurred to
62 you, in an effort to make the service to and from your plant convenient, efficient and economical to the railroads?

A. We have done everything within our power to make the operations within the confines of our plant as simple as they can

possibly be made, both within our organization and in cooperation with the officials of the Wabash Railway.

Q. Have you endeavored to your utmost ability to comply with the requirements and the observations in the Commission's decision, its main decision on May 14, 1935, in this case?

A. We have had the main decision of the Commission in Ex Parte 104 before us, and our aim has been to bring our operation within the order of the Commission in that case, the general order.

Q. You believe your operations are now within that order, or within that report?

A. My opinion is that they are.

Mr. BURCHMORE. That is all of this witness at this time. If the Examiner please, we now offer exhibits 1 to 8 both inclusive, and ask that they and each of them be received in evidence.

Exam. KING. They will be received.

Mr. THOMAS. We have no objection.

Exam. KING. Very well.

(Exhibits Nos. 1 to 8 both inclusive, Witness Burwell, received in evidence.)

63 Exam. KING. You may cross-examine.

Mr. THOMAS. I do not know what the attitude of other counsel representing the railroads is. It seems to me in view of the fact there have been rather elaborate exhibits put in here, we should have a little time to go over them before cross-examination. I would suggest that if the Staley Company has other witnesses, we might finish up the morning session with direct testimony, and then take up cross-examination this afternoon.

Mr. BURCHMORE. That is satisfactory.

Exam. KING. Very well. You may be excused for the time being, Mr. Burwell.

(Witness withdrawn.)

Exam. KING. You may call your next witness, Mr. Burchmore.

Mr. BURCHMORE. I will call Mr. E. W. Larrick.

Exam. KING. Be sworn, Mr. Larrick.

E. W. LARRICK, was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. Please state your full name, Mr. Larrick.

A. E. W. Larrick.

Q. Where do you reside?

A. Decatur, Illinois.

Q. Are you here testifying as a witness under subpoena?

64 A. I am.

Q. Are you now in the employ of the State of Illinois?

A. I am.

Q. Were you formerly connected with the Decatur Chamber of Commerce?

A. I was.

Q. In what capacity?

A. Manager of the transportation department.

Q. Were you its last manager?

A. I was.

Q. In other words, there has been no manager since you were the manager of the Decatur Chamber of Commerce?

A. That is correct.

Q. Are you familiar with the present industries, tracks, and the manufacturing situation in the city of Decatur?

A. I am in a general way.

Q. What is the practice of the Wabash Railway with regard to the delivery of carload freight at industries having private side tracks in the city of Decatur?

Mr. THOMAS. That is objected to unless it is restricted to the Staley plant.

Exam. KING. What was that question? Read it please, Mr. Reporter.

(Question read.)

Mr. BURCHMORE. This witness is not being brought for-
65 ward with the idea of giving any particular specific testimony limited to the A. E. Staley Manufacturing Company plant. His testimony, if your Honor allows us to present it, will go to the practice first of the Wabash, and afterwards of the Illinois Central and the other railroads with regard to the delivery of grain and grain products, coal, and other carload freight, and the movement out as well as the Shellabarger Grain Company, the Decatur Milling Company, and a considerable number which I could read to you of other industrial concerns at Decatur.

Mr. THOMAS. Mr. Examiner, we have heard without objection testimony concerning the practice of the Wabash and the other roads as far as they participate in the delivery of carload shipments to the Staley Company which I submit is the extent of the scope of this inquiry under the Commission's order. Therefore, I will object to the question.

Exam. KING. I will sustain the objection.

By Exam. KING:

Q. Did you ever work for the Wabash?

A. Yes, sir; for eight years—or rather, seven years.

Mr. BURCHMORE. Did you sustain the objection?

Exam. KING. Yes.

Mr. BURCHMORE. Very well.

By Mr. BURCHMORE:

Q. Are you familiar with the location of the various industries in the city of Decatur?

A. I am.

Mr. THOMAS. I offer the same objection, if the Examiner
66 please. It is immaterial to this inquiry.

Mr. LA FORGEE. If your Honor please, that is competent. We are asking to show his qualifications to testify to any location.

Exam. KING. Go ahead.

By Mr. BURCHMORE:

Q. Where is the Shellabarger Grain Company located.

Mr. THOMAS. The same objection.

Mr. BURCHMORE. I want to be in perfect respect to the Examiner's ruling, but I wish to make an offer of proof. We are prepared to make this proof by this witness as to the Shellabarger Grain Company first, and then as to the Decatur Milling Company and Hite Elevator Company, as to their location and as to the service performed and as to changes in other conditions at the present time as compared to 1931 or 1932 or 1936; that those companies continuing to receive service of placing cars at the spots of loading and unloading are assessed no charge therefor under any tariff.

Exam. KING. Well, I do not think there is any controversy about that, Mr. Burchmore.

Mr. BURCHMORE. There seems to be an unwillingness on the part of counsel for the Commission who is here to assist in bringing out the facts, for those facts to be gone into.

Mr. THOMAS. My objection is based upon the fact that those alleged facts are outside of the scope of this inquiry.

67 Mr. BURCHMORE. Well, we have stated the purpose for which we desire to offer the evidence.

Mr. THOMAS. The Commission has very well explained why it is that the A. E. Staley Manufacturing Company and a number of other companies which have been the subject of supplemental reports in Ex Parte 104, are denied the right to receive spotting at the railroad expense.

Exam. KING. Yes. The Commission has said why it issued its order in the 55th Supplemental Report. I want to restrict this hearing to just the changes which have occurred in the Staley plant since that time, Mr. Burchmore.

Mr. LA FORGEE. If your Honor please, just assuming that counsel's position were true, where there has been an expression from the Supreme Court of the United States involving this question, has not each one of those cases gone up upon a particular, full

and detailed statement of the facts involving that particular case?

Mr. THOMAS. We make no objection to testimony with reference to such conditions.

Mr. LA FORGEE. Very well. I submit, if the Examiner please—pardon me, for interrupting. If you have not finished, you may, and then I will reply to you.

Mr. THOMAS. I have finished.

Mr. LA FORGEE. I submit to your Honor that it is not only a question of—I say this because of counsel's reference
68 to what the Commission has said in other cases. My point is that each case rests flatly on the facts, each particular case. What constitutes res gestae in relation to a matter of this kind? It involves more than the brick and mortar of the wall. There is a live creature, an industry operating there. It comes in contact with all the world. The carrier is the instrumentality which makes it possible for it to do its business. Those things are all matters which are involved in relation to a changed condition. As I say, the issue is not fixed by some other case, because the federal court, the circuit court of appeals and the Supreme Court, however, they have decided, although disagreeing sometimes, have always been very patient and gone into considerable detail in relation to the surrounding circumstances and facts involved in the particular case. So, in this case, the location of this plant, the method and manner by which it is operated as compared with other plants, produces conditions.

Mr. THOMAS. Are you through?

Mr. LA FORGEE. Yes.

Mr. THOMAS. Mr. Examiner, I want to call your attention to the fact that the 55th Supplemental Report in discussing the Staley Manufacturing Company terminal allowance, does not concern itself with the conditions of service at any other plant, other than the steel company, which was served along with it and considered along with it. Reference to any of the
69 other supplemental reports will show that the Commission has confined itself, as the basis of its action in connection with a particular plant to conditions at that particular plant, regardless of what the carriers may have done or may not have done at other or competing plants. The very proposition that is now advanced here, if you take them altogether, is the proposition stressed most strongly in the suits attacking those terminal allowances in the courts. Clear to the Supreme Court it was contended it was the universal practice for the railroads to do the spotting, and the Supreme Court has found in express language that had not been shown, and even if it had, it would not

prevent the Commission in a case where it had found upon examination of the conditions existing at that particular plant, finding that the carriers were not obligated or not entitled to do the spotting at their own expense. I submit that the argument made by the gentleman is not at all sound and that the proposition I originally made in my objection to this witness' testimony should be sustained.

Mr. BURCHMORE. Mr. Examiner, may I just ask Mr. Thomas to note that in the Commission's 55th Supplemental Report dealing with the physical situation of the Staley Company, the Commission made this conclusion——

Mr. THOMAS. What page?

Mr. BURCHMORE. Page 660.

Mr. THOMAS. Page 660?

70 Mr. BURCHMORE. Yes. May I proceed without interruption?

Mr. THOMAS. I merely asked you the page, so I could follow you.

Exam. KING. Proceed, gentlemen.

Mr. BURCHMORE. "By the payment of an allowance to the Staley Company for service performed beyond these points on interstate shipments, respondent carriers provide the means by which the industry"—meaning Staley Company—"enjoys preferential service not accorded to shippers generally." Since the year 1936, if that were true in 1936—if, since 1936, instead of receiving preferential service not accorded to shippers generally, which of course means some other shippers than A. E. Staley Manufacturing Company, through the medium of the allowance and so forth, through the medium of a tariff which did not exist in 1936 we are receiving a service which is far less than the Shellabarger Grain Company, the Decatur Milling Company and all the other shippers we can think of are getting, which this was, because it was a preference in favor of Staley in 1931, or believed by the Commission to be, through the medium of the allowance—but, if as I say, the condition has changed, so today Staley is getting a raw deal and shippers generally all are getting service comparable with what Staley gets, and they are getting it free and we are paying, is that not a change n another condition?

Mr. THOMAS. Mr. Examiner, counsel knows very well that

71 the Commission in making its order following the supplemental report, the 55th Supplemental Report, did not rely upon sections 2 and 3 which forbid preference or prejudice. They confined it solely to this——

Exam. KING. Just a moment please, Mr. Thomas. Off the record.

(Discussion outside the record.)

Exam. KING. Back on the record.

Mr. BURCHMORE. We have been told certain things in the Staley case in court. I was talking about what was said in the Supreme Court in some other cases. In the Staley case certain statements were made in Judge Briggle's court room to Judge Briggle, as to what the Commission did do and did not do, and what the facts were and what the facts were not. We are not trying that case here. However, when we go back in court again, if we have to go back to court—although I do not think that is going to happen; I think the Commission is going to say that our practice is within its order—but if we do go back to court, Mr. Thomas I apprehend will speak in loud tones of what a full and complete hearing we got here today. I think your Honor ought to let us show that the Shellabarger Grain Company and the Decatur Milling Company today are receiving preferential service against us, whereas we used to get preferential service against them, granting for the purpose of argument that this finding must be respected.

72 Mr. LA FORGEE: If your Honor please, I would like to say——

Exam. KING. Just a moment, please. Permit me to say something, gentlemen. I want you to have just as full and complete a hearing as it is possible to get. However, I do not understand that the Commission sent me out here to hear testimony with respect to the Shellabarger Grain Company or the other companies you have mentioned, and I do not see how I can accept that testimony. They certainly had those things in mind when they issued this order. I am going to stay within this order.

Mr. BURCHMORE. Mr. Thomas said they did not.

Exam. KING. I am speaking about the order with respect to your petition.

Mr. BURCHMORE. Oh.

Exam. KING. We will have to confine the testimony to the Staley plant.

Mr. LA FORGEE. That is all we can ask him, I think, then, in view of that ruling.

Exam. KING. Sir?

Mr. LA FORGEE. I think that is all we can ask him, in view of that ruling.

Mr. BURCHMORE. That is all, Mr. Larrick.

The WITNESS. May I be excused?

Mr. BURCHMORE. Unless there is cross-examination.

Mr. THOMAS. No cross-examination.

Exam. KING. You may be excused.

73 (Witness excused.)

Exam. KING. Call your next witness.

Mr. BURCHMORE. I would like to call Mr. Charles Miller.
Exam. KING. Be sworn, Mr. Miller.

CHARLES D. MILLER was sworn, and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. State your full name and the city of your residence.
A. Charles D. Miller. My office is at 135 South LaSalle Street. I am traffic manager of the American Maize Products Company.
Q. What plant or plants does the American Maize Products Company operate today?
A. We operate a plant at Roby, Indiana, a point within the Chicago switching district.
Q. Upon what railroad or railroads is it situated?
A. It is served by the Indiana Harbor Belt and Pennsylvania Railroad.
Q. In what business are they engaged?
A. Manufacturing products of corn.
Q. Are they in competition with the Staley Manufacturing Company?
Mr. THOMAS. I object to that as immaterial.
Exam. KING. Sustained.

By Mr. BURCHMORE:

Q. Are cars placed for loading—strike that. Are you
74 familiar with the transportation practices and methods in and about your plant at Roby?
Mr. THOMAS. The same objection.
Exam. KING. What was the question?
Mr. BURCHMORE. I asked him if he was familiar with the transportation practices and methods in and around the plant at Roby.
Exam. KING. I will sustain the objection.
Mr. BURCHMORE. The only purpose of calling this witness is to develop the present practice at the Roby plant of the American Maize Products Company with regard to terminal switching and the placing of cars by the Pennsylvania Railroad and the Indiana Harbor Belt. Of course, if I cannot qualify the witness as to his competency, then I cannot go on with his testimony for the purpose of showing conditions as they exist today, and the existence—or rather, the nonexistence of any charge for the placement of cars by the railroads at loading and unloading points at that plant. I desire to proceed with the examination along those lines. Your Honor, in stopping the questioning as to his familiarity, has perhaps ruled on the whole matter.
Mr. LA FORGEE. If I may be pardoned again, I would like to make one suggestion. It seems to me it would be fair to tell the

Examiner that we have here the testimony of the various competitors—we have, have we not?

Mr. BURCHMORE. Yes. We have here the traffic man-
75 agers of each of seven companies.

Mr. LA FORGEE. We have the traffic managers of these various companies which are competitors with the A. E. Staley Manufacturing Company buying grain, buying soybeans and the various raw products from which these products sold in competition with Staley, both throughout the United States and abroad, are manufactured. We wish to show that as a result of that competition that they meet daily in the trade for their various products, they buy grain; that it is brought by common carriers both in intrastate and interstate commerce, and the grain so purchased by them and products sent out by them is taken into and from their respective plants by these common carriers in the same way it is delivered to the Staley Manufacturing Company and taken from its plant in like manner; and that as a result of that and for that service, no charge is made by the common carrier for the service so rendered on their behalf. It seems to me that that frankly states the proposition. The evidence is either competent or it is incompetent in the estimation and holding of this examiner. If it is incompetent, it is unnecessary to put all of these men upon the stand.

Exam. KING. For the reasons I have already indicated, Mr. La Forgee, I cannot accept if it is objected to. We will just have to proceed on that basis.

Mr. LA FORGEE. I would like to say this, if I may be
76 pardoned again, that it seems to me there is a reason why it should be received in evidence subject to objection, or not subject to objection, and that is that it would produce the entire picture, the landscape and foundation of the entire industry since 1936, as it affects A. E. Staley Manufacturing Company.

Exam. KING. Let me say right here that I do not say that that might not be desirable.

Mr. LA FORGEE. Yes.

Exam. KING. I do not want to be understood as saying you should not be afforded an opportunity to present that to the Commission, but I am limited by what the Commission said in its order, and I do not understand they intended for me to hear that evidence.

Mr. LAFORGEE. If your Honor please, if I may be permitted to continue and finish my suggestion, it may be that there is perhaps some divergence of opinion as to the full extent of this order. At any rate, the evidence admitted would be before the Commission to be received by it or rejected upon the final determination of this case, as it would in a case before a master in chancery or any other delegated power operating as the right arm of a court. It would

take the testimony in relation to a transaction; the chancellor or Commission would take that testimony; whether it proves or tends to prove any thing is quite another matter, but the record is
77 there. So it is in this case. The Commission in construing its order may arrive at an entirely different conclusion. At the same time, it is there if the necessity for consideration of it arises, and is worthy of consideration under the phrasing of the order.

Exam. KING. We will try these changed conditions now under the order the Commission issued.

Mr. LA FORGEE. Well, the ruling of the Examiner is to the effect, then, that all of this testimony in relation to competition and the manner in which the other industries are involved is immaterial in the trial of this case, and it is rejected?

Exam. KING. For the reasons stated in the order.

Mr. LAFORGEE. Yes.

Exam. KING. As I understand that order.

Mr. LA FORGEE. Very well.

Mr. BURCHMORE. That is all of this witness, then.

Exam. KING. Are there any further questions of this witness?

(No response.)

Exam. KING. You are excused.

(Witness excused.)

Mr. BURCHMORE. We have here prepared to testify to the same effect, or along the same lines, Mr. John Bingham, traffic manager for the Corn Products Refining Company; Mr. Charles Shackell, of Penick & Ford Limited; Mr. R. V. Craig, Allied Mills; Mr. R. A. Showalter, of Hubinger Brothers, and one or two
78 others.

Mr. LA FORGEE. We would further show that they constitute approximately 90 per cent of the industries engaged in the corn grinding industry in the United States.

Mr. BURCHMORE. I wish to withdraw the name of Mr. R. V. Craig of Allied Mills. He is not present.

Exam. KING. Have you another witness?

Mr. LA FORGEE. Yes; I will call Mr. Eakin.

Exam. KING. Be sworn, please.

F. EAKIN, was sworn and testified as follows:

Direct examination by Mr. LA FORGEE:

Q. State your name, please.

A. F. Eakin.

Q. What is your business or occupation?

Mr. THOMAS. Pardon me.

By Mr. THOMAS:

Q. What is your first initial?

A. The initial is "F."

Q. What?

A. "F" EAKIN.

By Mr. LA FORGEE:

Q. What is your business or profession?

A. I am vice president and comptroller of A. E. Staley Manufacturing Company.

Q. How long have you acted in that capacity?

A. Since March, 1932.

79 Q. In the discharge of your duties in connection with that corporation, have you had occasion to come in contact with the effect of the order which relates to the charges for spotting of cars by common carriers?

A. I have.

Q. For that institution.

A. I have.

Q. How long did you say you had been there, Mr. Eakin?

A. Six years and three months.

Q. Are you familiar with the amounts of money which have been paid out by the A. E. Staley Manufacturing Company during the period the rule has been applied to its business transactions out there?

A. Yes; I have tabulated the amounts since the order was put into effect.

Q. Do you know whether or not that tabulation is true and correct?

A. It is my belief the tabulation is correct.

Q. Was it done under your supervision and control?

A. Yes.

Q. I will ask you to state what the amounts of money paid out by the A. E. Staley Manufacturing Company were, in relation to the application of this order, giving as nearly as you can, the dates.

A. From the date the order was effective, in November
80 1937, to May 31st, 1938, inclusive, we paid to the railroads $22,570.80, all of which amounts were paid under protest and for a switching charge on cars originating outside of the state of Illinois, or going to a destination outside of the state of Illinois.

Q. Does that money apply only to interstate shipments and transactions?

A. Only to interstate shipments.

Q. What would be the amount of money paid out by the A. E. Staley Manufacturing Company in relation to intrastate shipments?

A. It would be substantially the same amount.

Q. Could you estimate, Mr. Eakin, the approximate sum per annum that the A. E. Staley Manufacturing Company would pay out because of the application of this rule to all shipments?

A. It will vary substantially from year to year. It will probably average between $80,000 and $100,000. It might be higher in some years. It might average more.

Mr. La Forgee. Pardon me just a moment, please. Off the record.

(Discussion outside the record.)

Exam. King. Back on the record. Proceed with your examination, Mr. La Forgee.

By Mr. La Forgee:

Q. What was your business before you went with the A. E. Staley Manufacturing Company?

A. I was departmental manager of the St. Louis office of
81 Ernst & Ernst, departmental manager for their special service department. May I explain a little more fully what that means?

Q. I would be very glad to have you do so.

A. The special service department was concerned with assisting the management of various businesses to solve their organization problems and their finance problems, or their profit problems; the investigation, if you will—the investigation of the economics of a particular business with a view to better organizing or better financing or better controlling that business.

Q. How many years' experience have you had along those lines?

A. Oh, I should say about 20. This is my 26th year in business, omitting the early years.

Q. Have you had occasion to be called into the service of various types of corporations within that period with a view to solving and determining their problems?

A. Quite a large number.

Q. Have you written some newspaper and magazine articles upon this topic?

A. Yes.

Q. Mr. Eakin, you are quite familiar with the financial concerns of the A. E. Staley Manufacturing Company; are you not?

A. I am.

Q. With reference to this $100,000 that is paid out by this company upon this charge which is imposed by the railroads annually, have you made an examination, and are you prepared

82 to state to the Examiner how that is reflected in the financial affairs of the A. E. Staley Manufacturing Company?

Mr. THOMAS. I object to that as irrelevant and immaterial to this issue. Of course, it is detrimental to the Staley Company. That is admitted. It is beneficial to the railroads, however.

Exam. KING. I do not think that will help us any, Mr. La Forgee.

Mr. LA FORGEE. There is a changed condition which relates solely and exclusively to the A. E. Staley Manufacturing Company.

Exam. KING. If you can convince the Commission that was what they meant by the word "other," it might be different. You cannot convince me.

Mr. LA FORGEE. I am entirely willing to try to convince the Commission.

Exam. KING. Perhaps you will have better luck with them than you will with me now. I will sustain the objection.

By Mr. LA FORGEE:

Q. Mr. Eakin, you may state whether or not—withdraw that.

Mr. LA FORGEE. These questions are simply for the purpose of preserving the record, if Your Honor please. I do not want to have Your Honor feel I am being impertinent in any sense by constantly asking these questions.

Exam. KING. No. Go right ahead.

Mr. LA FORGEE. I would like to have these questions on
83 the record.

Exam. KING. Go ahead.

Mr. LA FORGEE. Thank you.

By Mr. LA FORGEE:

Q. You may state whether or not you are familiar with the method and manner by which similar transactions are carried on and taken care of by competitors of the A. E. Staley Manufacturing Company; those which are engaged in the corn grinding industry.

Mr. THOMAS. That is objected to as outside of the scope of the authorized inquiry.

Exam. KING. I did not understand the question. Read it to me, please, Mr. Reporter.

(Question read.)

Exam. KING. I do not understand what you mean, Mr. La Forgee.

Mr. LA FORGEE. I mean this—withdraw the question.

By Mr. LA FORGEE:

Q. Mr. Eakin, are you familiar with the charges and credits which are made by the competitors of the A. E. Staley Manu-

facturing Company as to their manufacturing costs and the selling price of their product?

Mr. THOMAS. I object to that, if the Examiner please.

Exam. KING. He asked if he was familiar with it.

Mr. THOMAS. It is not within the scope of this inquiry.

Exam. KING. He asked if he is familiar with it.

Mr. THOMAS. It is immaterial.

84 Exam. KING. Well, I will sustain the objection.

By Mr. LA FORGEE:

Q. You may state whether or not you have taken any occasion to examine and determine whether or not any of the competitors of the A. E. Staley Manufacturing Company pay the same or a similar charge for service rendered by a common carrier in relation to their incoming or outgoing products.

Mr. THOMAS. The same objection.

Exam. KING. The same ruling.

By Mr. LA FORGEE:

Q. Mr. Eakin, do you have anything to do in the plant in relation to the purchase of the raw products, corn, soy beans, oats, wheat, or whatever it may be that is subject to processing in the plant?

A. Yes; from two approaches. One is the matter of accounting and the second is the matter of advisability of making purchases at certain prices under certain conditions.

Q. You may state whether or not there are quoted prices for the purchase of corn and various other agricultural products.

A. There are quoted prices in the public markets such as Chicago, and also prices that are quoted to the trade by the various buyers.

Q. You may state whether or not a small discrepancy—or rather, a small difference of one cent, one-half cent, a quarter of a cent, or an eighth of a cent per bushel in the price of corn reflects to such an extent as to put A. E. Staley Manufacturing Company at a disadvantage in meeting competitors who do not have

85 to pay a like sum?

Mr. THOMAS. That is objected to as immaterial, and outside of the scope of the Commission's order. Further, it is an attempt to evade the ruling already made by the Commission in connection with the relationship of the Staley Company and other companies as effected by the Commission's order in Supplemental Report No. 55, and is not material.

Exam. KING. I will sustain the objection.

By Mr. LA FORGEE:

Q. You may state whether or not, Mr. Eakin—withdraw that question. You have mentioned the sum of approximately $80,000

or $100,000 in money paid out by the Staley Company as a result of the application of this charge by the carriers. You may state whether or not that sum or any part or portion of it can or has been passed on to the purchaser of the product.

Mr. THOMAS. That is objected to as immaterial.

Exam. KING. I think it is immaterial to this hearing.

Mr. LA FORGEE. Do you sustain the objection?

Exam. KING. Yes.

By Mr. LA FORGEE:

Q. You may state whether or not by any process, method, or manner of business, that sum or any part or portion of it has been applied on the seller of the product from whom you have purchased the commodity.

Mr. THOMAS. That is objected to as immaterial and irrelevant, if the Examiner please.

86 Exam. KING. I will sustain the objection.

Mr. LA FORGEE. One more question, if your Honor please.

By Mr. LA FORGEE:

Q. Are you familiar with the fact that there are various other competing concerns with the A. E. Staley Manufacturing Company?

A. Yes, sir.

Q. Where are the raw products of the A. E. Staley Manufacturing Company purchased?

A. The principal portion is purchased in the state of Illinois, but substantial portions are purchased from Missouri, Iowa, and other nearby states.

Q. They usually purchase——is that usually purchased directly from the farmer, the raiser, or does it come through country elevators?

A. Country elevators.

Q. Located at various places throughout the several states where corn is raised?

A. Yes.

Q. Is that correct?

A. That is right.

Q. You may state whether or not those same competitors buy or bid in the market for the product at the same elevators and through the same territory that the Staley Company secures its grain or raw products in.

Mr. THOMAS. That is objected to as irrelevant and
87 immaterial and outside of the scope of this inquiry.

Exam. KING. I will sustain the objection.

Mr. LA FORGEE. I think that is all, if your Honor please.

Exam. KING. Is there any cross-examination?

Mr. THOMAS. I have just one or two questions.

Cross-examination by Mr. THOMAS:

Q. I understand, Mr. Eakin, that from November to May—that is, November 1937 to May 31st, 1938, the amount actually paid out by A. E. Staley Manufacturing Company to the Wabash Railway for spotting cars was $22,570, is that correct?

A. Just to this extent let me correct that: that was the total amount paid out, but a portion of that was paid to some of the other railroads.

Q. Does the figure you gave include intraplant movement?

A. It does not.

Q. Do you know about how much intraplant movement there would be?

A. The intraplant movement—no. I cannot give you the exact intraplant movement in that same period. My tabulation is for a little different period. However, it was a substantial amount.

Mr. BURCHMORE. May I suggest that intraplant movements are not within the scope of this hearing.

Mr. THOMAS. That is very true.

88 Mr. BURCHMORE. That does not, perhaps, trouble Mr. Thomas.

Mr. THOMAS. I wanted to be sure the figures were what I understood them to be.

The WITNESS. It is a substantial amount. The intraplant was a substantial amount.

By Mr. THOMAS:

Q. I understand that applies only to—I mean, that those payments were made only upon interstate shipments?

A. Yes; interstate shipments.

Q. Yes.

A. That is right.

Q. Now, if the same—if intrastate shipments which were spotted at the Staley plant paid at the same rate per car, I understand that there would have been—probably the railroads would have received an additional equal amount?

A. That is approximately correct.

Q. I see. You say that if all shipments either or both interstate or intrastate had to pay this spotting charge, it would result in a cost to the Staley plant of from $80,000 to $100,000 per year?

A. Yes; in normal years. Understand, there are substantial fluctuations.

Q. Yes.

A. But that is an average normal year.

Mr. LA FORGEE. Is this a normal year?

Mr. THOMAS. I think that is all.

89 Exam. KING. Is there anything further?

By Mr. BURCHMORE:

Q. These charges were paid under protest, you said; is that correct?

A. Yes. All of these charges were paid under protest.

Mr. BURCHMORE. I want to say we have not been of the opinion the charges were legally assessable under tariffs. The tariff does not impose such a charge. Assuming it does impose such a charge, those amounts have been paid under protest.

The WITNESS. We paid at the rate of $2.27 and $2.50 per car.

By Mr. THOMAS:

Q. What is the $2.50 per car, Mr. Eakin?

A. The $2.50 is the same thing, after the 10 percent increase.

Mr. THOMAS. I see.

Mr. LA FORGEE. That is all, Mr. Eakin.

Exam. KING. Are there any further questions of this witness?

(No response.)

Exam. KING. You may be excused.

The WITNESS. Thank you.

(Witness excused.)

Mr. BURCHMORE. We have no other witness until Mr. Burwell's cross-examination is completed.

Mr. THOMAS. May we take an adjournment now, Mr. Examiner?

Exam. KING. What time do you want to reconvene?

Mr. BURCHMORE. Whenever you say.

90 Exam. KING. We will recess at this time until 2 o'clock.

(At 11:45 A. M. Central Standard Time, adjourned until 1 o'clock P. M., Central Standard Time.)

AFTERNOON SESSION, 1 P. M.

Exam. KING. Come to order please, gentlemen. You may proceed.

Mr. BURCHMORE. Take the stand again, Mr. Burwell.

Mr. THOMAS. If the Examiner please——

Mr. BURCHMORE. May I ask him one question before you proceed with your cross-examination, Mr. Thomas?

Mr. THOMAS. Yes.

T. C. BURWELL, recalled, having been previously sworn, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. BURCHMORE:

Q. Mr. Burwell, at the time of the Commission's order attached to its 55th Supplemental Report, switching in and about the Staley plant was being performed by a Staley-owned locomotive and you received an allowance?

A. That is correct; yes, sir.

Q. Well, at that time I must assume that the Staley locomotive was operating under the jurisdiction, orders, and supervision of the Staley Company officers.

A. Yes.

Q. Is that correct?

91 A. Well, the engine was operated under a Staley yardmaster; yes, sir.

Q. The company owned the engine it employed and the men who ran the engine and switched the cars within the plant?

A. That is correct.

Q. Well, now, at the present time you said you have no engine; that you are operating no engine and the switching service at the plant is being performed by the Wabash Railway engines.

A. That is correct.

Q. Do you have some intraplant movements strictly; cars moving from one place in the plant to another place in the plant?

A. We do; yes, sir.

Q. That is done by a Wabash engine?

A. That is right.

Q. Do you supervise the work of the Wabash engines or crews in any manner?

A. The work of the Wabash crews is not supervised in any manner by any Staley employee.

Q. Do you or any of your officers or employees give any orders whatever to the engine or yard crew of the Wabash?

A. I might explain that this way: The head shipping clerk, Mr. John Siebert, who is located in 20 building, telephones all orders for movement of cars to a Wabash yard clerk, a clerk of the Wabash general yardmaster. That clerk in some way—I do not know how—gets those orders to the foreman of the

92 engine inside of the plant doing the switching.

Q. This Wabash yard clerk that you refer to is a clerk employed by the Wabash Railway?

A. He is a clerk employed by the Wabash Railway; yes.

Q. Did the Wabash officials designate him to you as the man to whom requests for switching should be sent?

A. They have designated, I believe, either the general yardmaster or some one of his various clerks.

Q. Do you have any yardmaster?

A. We do not.

Q. Now, for the strictly intraplant service, where a car is moved from one place in your plant to another place in your plant, at your request, loaded or partially loaded with goods; is there a charge that you pay for that service?

A. There is a charge and there is a switching ticket issued in triplicate. That is issued in the shipping department.

Q. How much is that charge?

A. The charge is either $3.15 or $1.80. I am talking about the charges before Ex Parte 123. The charges before Ex Parte 123 were $3.15 if a car originated and was destined within the plant. But if we started to load a car of starch, for example, and finished loading the car with syrup, for the movement from 20 to 17 building the charge was $1.80, provided there was a subsequent road haul movement.

Q. Are those charges provided in tariffs on file with the
93 Interstate Commerce Commission?

A. They are.

Q. Do those same tariffs apply at other industries?

A. They do.

Q. In Decatur?

A. Yes, sir.

Exam. KING. Those charges have been paid without protest; is that right?

Mr. BURCHMORE. There is no protest about that. There is no question about that.

Exam. KING. Very well. Proceed.

Mr. BURCHMORE. Subsequent to the Commission's order attached to the 55th Supplemental Report, I should like to state for the record, Mr. Examiner, that the Staley Company filed a bill in the United States District Court under No. 2224 to set aside that order, and in view of the reopening of this case it withdrew that bill and caused the court, under date of—it withdrew that bill without prejudice and caused the court under date of May 19, 1938, to dismiss that cause, so that there is not now pending in the court any bill to set aside the Commission's order. That is all on direct examination.

Exam. KING. Are there any other court proceedings pending at all now?

Mr. BURCHMORE. There is pending, undisposed of——

Exam KING. With reference to this switching.

94 Mr. BURCHMORE. There is pending, undisposed of a court proceeding by the A. E. Staley Manufacturing Company entitled, A. E. Staley Manufacturing Company versus the Illinois Central, Baltimore & Ohio, Illinois Terminal, Pennsylvania, and

Wabash Railroads, under No. 18710 in the district court at Springfield, for the southern district of Illinois, involving the subject matter of service at the Staley Plant, and the Interstate Commerce Commission intervened in that proceeding.

Exam. KING. What was the nature of that?

Mr. BURCHMORE. It was a proceeding of mandamus to compel the defendant railroads under section 23 of the Act, to perform and furnish transportation on the same terms transportation was furnished for other shippers. It is pending and undetermined. There was a motion to dismiss and a counter-motion to strike the motion to dismiss. Both have been briefed, but not disposed of.

Exam. KING. I see. Are you ready for cross-examination?

Mr. THOMAS. Mr. Examiner, I suggest that perhaps counsel for some of the railroads who have entered appearances here, would like to proceed with cross-examination before counsel for the Commission begins.

Exam. KING. Are there any of the gentlemen who have entered appearances here for the railroads who desire to cross-examine Mr. Burwell on his direct testimony?

Mr. LA FORGEE. If your Honor please, how many cross-
95 examinations are there to be? Cross-examination should be simply cross-examination, and not a series of cross-examinations.

Exam. KING. I think probably we are going to have one. I will answer your first question first.

Mr. LA FORGEE. That is what I had in mind.

Exam. KING. Go ahead, Mr. Thomas.

Mr. THOMAS. Very well.

Cross-examination by Mr. THOMAS:

Q. Mr. Burwell, this Mr. Siebert—is that his name?

A. Siebert.

Q. How do you spell it?

A. S-i-e-b-e-r-t.

Q. He is an employee of the Staley Manufacturing Company; is he not?

A. He is our chief shipping clerk; yes, sir.

Q. His communications with the Wabash representatives within your plant are by telephone, you say?

A. Solely by telephone; yes, sir.

Q. He makes no written—or rather, he gives no written directions?

A. The only written directions he gives is confirmation of the intraplant switching on a form which is issued in triplicate. The original goes to the Wabash that evening, confirming those

telephone conversations. He retains a copy. The other
96 copy goes to the traffic department.

Q. The nature of his communications is as to when and where certain designated cars are desired within the plant; is that not correct?

A. No; I do not think so. The nature of his duties is—well, for instance, there is a Wabash car at 20 building that has to be set at 16 building to complete loading. It does not tell him when or where. That is the intraplant part of it.

Q. Now you say that the A. E. Staley Manufacturing Company has no yardmaster?

A. That is correct.

Q. Does it have anyone—withdraw that. It has several yard offices, has it not, within its plant?

A. The only yard office I know of—there is a scale house at the scale. That is the only yard office I know of.

Q. Who is in that? Who is customarily in that house?

A. A fellow by the name of Charley Ellis, and a fellow by the name of C. O. Martin, who are weighmasters in the scale house.

Q. Who else occupies the scale house?

A. When they took over the switching in there we enlarged the scale house to provide desk room for the Wabash Railway.

Q. Is that not the building commonly known as the Staley yard office?

A. No, sir. It is listed in the telephone directory as the scale house.

97 Q. As the scale house?

A. Yes.

Q. I herewith show you a printed form headed, "A. E. Staley Manufacturing Company Yard Check," and written on it the date January 20th, 1938.

A. Yes.

Q. I will ask you if you can identify that paper?

A. I cannot; no, sir.

Q. Are you familiar with the form upon which it is written?

A. I presume that is a Staley form. It speaks for itself.

Q. I herewith show you four more similar forms and ask if you can identify any of those by handwriting or otherwise, and state who made them out and what they mean.

A. It is possible, Mr. Thomas, there was a lot of these forms left over. They might have been turned over to the Wabash for use. I do not know what they mean or who made them out. I do not recognize the handwriting at all.

Q. Are they forms the Staley Company was using when it was doing spotting in there under allowance?

A. I am inclined to believe it was the form they used when they operated their own engines; yes, sir.

Q. Is the form which you have in your hand dated?

A. It is; January 21, 1938.

Mr. BURCHMORE. No. The form is not dated.

Mr. THOMAS. I meant, the date is inserted in the form
98 you have.

The WITNESS. Yes.

Mr. BURCHMORE. Yes; in lead pencil.

Mr. THOMAS. In lead pencil.

By Mr. THOMAS:

Q. That date is dated subsequent to the time A. E. Staley Manufacturing Company ceased to do its own switching?

A. I can tell you positively there is no Staley employee making any switching lists.

Q. Do you know whether or not the information or direction given by your employees is of the same nature and character and the same substance as appears on this yard check, or these yard check sheets?

Mr. BURCHMORE. Just a moment. I suggest that that is immaterial as it is phrased. There is not any identification yet of these cards at all as having anything to do with the interstate movement of cars at the beginning or end of transportation. I should think from the phraseology of Mr. Thomas' question, probably he thinks they relate really to intraplant movements, which are not within this case.

Mr. THOMAS. No.

Mr. BURCHMORE. I would like him to establish some connection with these cards to any interstate transportation before he pursues it too far.

Mr. THOMAS. I will say this——

99 Mr. LA FORGEE. It is purely hearsay evidence, and there is not anything in the world in this, except to try to draw from the witness a conclusion without any evidence of any fact.

Mr. THOMAS. My purpose is simply to try to find out what is actually being done.

Mr. BURCHMORE. That is right.

Mr. THOMAS. At the present time. I will state that I expect ultimately to show the source of these checks. I thought possibly it could be done through this witness, but of course if this witness does not know, I will have to endeavor to do it by subsequent witnesses. I therefore ask that these papers which I have shown the witness be marked for identification as exhibits—whatever numbers the reporter sees fit to put on them, and I will merely hold them for subsequent identification.

Exam. KING. They will be identified as exhibits 9, 10, 11, 12, and 13.

Mr. LA FORGEE. The only identification therefore would be to identify them as cards which have been submitted to the witness, which he said he did not know anything about.

Mr. THOMAS. Exactly.

Mr. LA FORGEE. You do not have to mark them if you do not want to.

Mr. BURCHMORE. You do not have to mark them. You can bring them up at the proper time.

100 Exam. KING. They will be identified as exhibits 9, 10, 11, 12, and 13.

(Exhibits Nos. 9 to 13, both inclusive, marked for identification.)

Exam. KING. Proceed.

By Mr. THOMAS:

Q. Now, Mr. Burwell, I call your attention to Exhibit No. 1, which is the very long sheet. I want to ask you about some lines which appear in black on the second section from the part of the map showing the east end and ask you if those marks were on there when this map, as you testified, was supplied to you by the Wabash.

A. These black marks?

Q. Yes.

A. They apparently were.

Mr. BURCHMORE. I believe they were.

The WITNESS. To the best of my knowledge and belief, they were.

By Mr. THOMAS:

Q. I will ask you when the Wabash acquired those tracks, if you know.

A. We opened negotiations on those tracks, it seems to me, in early December 1937, on or about the 10th, which was the time that the Wabash Railway took over all of the switching within our plant. The Wabash Railway has acquired that property. We no longer have need for the property.

Q. When and under what conditions or under what sort

101 of a transaction did the Wabash acquire that property?

A. As I say, we opened negotiations, or they did, on or about December 10th, and they acquired that property under lease.

Q. Written lease?

A. I think there was a court order.

Mr. LA FORGEE. Mr. Thomas, we will be very glad to furnish you a copy of the instrument which was executed in pursuance of that understandig between the Wabash and the Staley Com-

pany, as a result of negotiations that began in December 1937, which was submitted to the United States Court in the eastern district of Missouri, evidence heard upon it, and an order entered for the receivers to execute it.

Exam. KING. Do these tracks you are speaking of now show on this exhibit 2?

Mr. BURCHMORE. Yes.

Mr. THOMAS. They show on exhibit No. 2.

Mr. BURCHMORE. In red.

Mr. THOMAS. In red.

Exam. KING. North of the present property line.

Mr. THOMAS. Yes.

The WITNESS. No. The property line has been changed—yes; north of the present property line.

Mr. LA FORGEE. There is the contract and there is the plat showing the location of the tracks, and there is a certified
102 copy by the clerk of the United States court, with the order of the court, having heard the testimony as to the propriety of the contract, and approved it. The order is executed.

By Mr. THOMAS:

Q. That is one of the changes that has taken place since the Commission's order, is it not, Mr. Burwell?

A. It is my recollection that the Wabash took over this property on December 10th, 1937.

Q. Yes.

A. In compliance with an oral agreement which this contract supplements. That was the day that the Wabash took over all of the switching within our plant.

Q. I see.

By Exam. KING:

Q. What was that date again?

A. I think the date was December 10, 1937. It was on or about that date, the same date that the Wabash took over all of the switching.

By Mr. THOMAS:

Q. The title did not pass, however, until the date of the lease to which counsel has just referred?

Mr. BURCHMORE. I object to that question. He is not competent to testify on that.

Mr. THOMAS. I agree with you.

Exam. KING. I will sustain the objection.

Mr. THOMAS. That is not a question for this witness. I ask, if the Examiner please, in order that the Commission may know the full circumstances of the changes which have taken place,

that they be required to let us have copies. We will
103 not ask for the original, of course——

Mr. BURCHMORE. Just a moment. When we get to the point we were going to offer this document with a request that we have time to have copies of it made and substitute them for the original. We have not yet gotten to that point. It did not occur to me that Mr. Burwell was competent to testify to the legal effect of a document actually signed by his president and approved by his counsel and by the receivers and the court.

Mr. LA FORGEE. It has a full recital in the inducement clause as to why it was made, and the circumstances under which it was made, all of which was approved by order of the court.

Exam. KING. Proceed.

By Mr. THOMAS:

Q. Mr. Burwell, I refer to a blueprint entitled "Track Map, A. E. Staley Manufacturing Company, Decatur, Illinois, Civil Engineering Department." Then it shows a number of dates thereafter "Traced," "Checked," "Examined," and "Approved," ending with a notation "Revised 6/18/37." I will ask you if this blueprint which I show you shows correctly the tracks of the Staley Company opposite Staley elevator C, up to the effective date of the lease.

Mr. BURCHMORE. Wait a minute. I object to that question. He is trying to ask him directly, or indirectly, as to when that lease took effect.

Mr. THOMAS. Very well.

Mr. BURCHMORE. If you want to ask——

104 By Mr. THOMAS:

Q. Is it correct as of June 18, 1937?

Mr. LA FORGEE. The plat itself is the best evidence.

Mr. BURCHMORE. Without knowing where it came from, I would like to have the witness examine every foot of it before he says it is.

Mr. THOMAS. This is a plat which you gave—a blueprint and plat which you gave to Mr. Rice, special agent.

Mr. LA FORGEE. Where is the evidence about that?

Mr. THOMAS. I am asking the witness if it is correct——

The WITNESS. This is not a copy of the exhibit that I submitted this morning.

Mr. THOMAS. No.

The WITNESS. I presume that the legend of the engineer speaks for itself.

Mr. BURCHMORE. If Mr. Rice says he got that from us, it was correct at the time it was given to him, or substantially correct.

The WITNESS. It shows that it was checked by R. O. Hartman, our chief engineer, on December 17, 1934, and it says, "Revised up to June 18, 1937." I presume it is correct. I do not know.

Q. You remember giving it to Mr. Rice, do you not?

A. In my office; yes, sir.

Q. You gave it to him as a correct plat and map of the Staley plant, did you not?

105 A. It is my impression, in handing that to Mr. Rice, that was substantially correct; yes, sir.

Q. Mr. Burwell, referring to exhibit No. 2, the east portions of the track lines indicated in yellow, which the legend on the blueprint states are tracks taken out of service—that means only that they are taken out of service. In other words, the physical tracks are still existent, are they not?

A. The tracks are there, but they have been definitely spiked so they cannot be used, and this particular track from Brush College Road west is unsafe for operation on account of some washes that have happened during the winter. All of the tracks are definitely out of service by being spiked.

Mr. BURCHMORE. Just a moment.

Mr. THOMAS. Yes.

Mr. BURCHMORE. Off the record.

(Discussion outside the record.)

Exam. KING. Back on the record.

By Mr. THOMAS:

Q. In speaking of a track from Brush College Road, you are referring to the yellow track at the extreme east end of the Staley plant?

A. That is the track at the extreme end of the Staley plant.

Q. The east end.

A. That is used solely for the handling of cars for the account of the Illinois Central, the Illinois Terminal, and the Pennsylvania, but under our present mode of switching, there is no

106 use for that track. I said to our engineer, "You can take it up or leave it there. You can do whatever you want to do with it." He decided to spike it.

Q. What do you mean by "spike it"?

A. The track is spiked. All the spikes can be taken up, of course.

Q. The use of the track was stopped because since the Wabash was doing all of the switching for the Staley Company, it was no longer needed, the Wabash having a more convenient point of entry?

A. That is right. We did not want to keep the track up and keep it in a serviceable condition when it was not being used. I told the engineer he could do what he pleased.

Q. It is still there, though?

A. Yes. It is still there,

Mr. THOMAS. I think Mr. Burchmore has something he wanted to add, Mr. Examiner.

Exam. KING. Did you have something you wanted brought out, Mr. Burchmore?

Mr. BURCHMORE. No.

The WITNESS. All of the tracks shown in yellow on this map are there and spiked and out of service.

By Mr. THOMAS:

Q. Is it not a fact that the tracks shown in yellow, which you say are now out of service, constitute a very small proportion of the aggregate trackage within the Staley plant?

107

A. I do not think that is correct—just a moment. Our yard had a capacity, when we were doing the work, of 1,036 cars. The storage capacity on June 24, 1938, was 584 cars, which was reduced from 1,036 to 584.

Q. That takes into consideration these tracks opposite elevator C, which you say were turned over to the Wabash?

A. That is right.

Q. Yes. It does not include the part in yellow which was a running track, that is at the extreme east end?

A. That includes—a memorandum from our engineering department dated June 24, 1938, indicates this is the car capacity for this main line and switching leads.

Q. Can you state in miles that same data, other than in car capacity?

A. The Staley system of tracks, total tracks shown in white on the blueprint, represent fourteen thousand and nine miles.

Mr. BURCHMORE. Just a moment.

The WITNESS. That is wrong.

Mr. BURCHMORE. What is the correct figure?

The WITNESS. 14.9.

Mr. BURCHMORE. No.

The WITNESS. I mean, 14.09.

Mr. BURCHMORE. 14.1 miles, about?

The WITNESS. That is correct.

108

By Mr. THOMAS:

Q. Now, is that trackage remaining after the elimination of these that are marked in yellow on this blueprint?

A. That is the track remaining after——

Q. I said, "marked in yellow." I should say, "marked in yellow" and also tracks which are marked in red, the subject of recent transaction with the Wabash.

A. This memorandum is not clear, Mr. Thomas, but it is my impression that the 14.1 miles includes the yellow lines. That is the total Staley system of tracks.

By Exam. KING:

Q. At the present time?

A. As of June 24th.

By Mr. BURCHMORE:

Q. 1938?

A. 1938.

By Mr. THOMAS:

Q. What was the mileage at the time of the hearing, or at the time of the Commission's report?

A. At the hearing in 1932, as I recall—and it is only from recollection—I believe it was something in excess of 18 miles.

Q. Now, the changes that have taken place with respect to the nonuse of certain of these tracks have been occasioned, have they not, by the diminution of business and also by the fact that the Wabash bringing all of the cars in used somewhat different lead tracks into the Staley plant; is that not correct?

A. It has been occasioned by a change in the method of
109 handling cars in our plant. Now, at the time of the hearing and at the time the Staley Company was doing the switching, all in-bound and out-bound cars were classified by the Staley engine on the Staley tracks. The cars are now classified in railroad yards beyond the confines of the Staley plant. Therefore, there was no necessity for those tracks.

Q. Well, for instance, you spoke of the loading platforms opposite the package goods warehouse. The fact you do not use some of that trackage is attributable to less business than you have had, is it not?

A. I would not say so. For instance, in March 1938, we had the largest volume of business we ever had in the history of the company. Our business is much better than it was a year ago.

Q. In packaged goods?

A. That is not packaged goods; that building is starch.

Q. I thought you said "package starch."

A. Package starch and bulk starch in bulk and bags.

Q. Who directed these changes? Did the Wabash or the Staley Company?

A. The Staley Company.

Q. In what way was the change effected?

A. By telephone conversation with the superintendent's office of the Wabash Railway and a letter confirming the conversation

that those tracks had been spiked and were no longer available for service.

110 Q. You wanted them to use other tracks for serving——

A. They were told that these tracks were out of service and they would not be maintained.

Q. The elimination of the use of those tracks was the only substantial change betwen the manner in which the Staley Company was doing it with its own engines, at the carriers' expense, and the manner in which the Wabash has been doing it at the expense of the Staley Company?

A. No.

Q. What other changes have there been?

A. The big change, Mr. Thomas, was a matter of classification. Our engine in 1932 pulled cars from the loading platforms and put them out into the yard; and after they got them from the various loading platforms and shoved them on certain tracks, then they would classify those cars as to whether they were going to the Illinois Central Railroad, the Illinois Terminal, Wabash Railway, the Baltimore & Ohio Railroad, and so forth. Today the Wabash Railway pulls those cars direct from the loading platforms and take them all out into their own yard on their own rails. Then they classify them as to where they are going and they make the interchange. If they happen to be going, to be going to the Illinois Central, the Pennsylvania, the Baltimore & Ohio Railroad, or the Illinois Terminal, they classify them accordingly. We have been able to make quite a substan-

111 tial reduction in our hazards in there from a safety standpoint by reason of the fact we do not have anything like the number of engine hours inside of the confines of our plant that we had in 1932.

Q. In what way was the arrangement made with the Wabash Railway to do this spotting for your company?

A. I think it was merely notification to them. They were handling the bulk of our traffic—that is, their division headquarters, I should say. They have a roundhouse and system locomotive shops there. We felt they were better qualified to do it than any of the other railroads. As I say, they were already handling the bulk of our traffic. We asked them to take over all of the switching, which they did, on or about December 10th.

Q. The classification, then—or rather, the change in the place of classification—is the chief difference between the manner in which the Staley Company engines did it and the manner in which the Wabash engines have been doing it since the Staley engines have been laid up?

A. That is one of the changes.

Q. What other difference is there, if any?

A. A reduction in engine hours inside of the confines of the plant. There is also the fact that the movement today is a straight simple switch from east to west.

Q. What do you mean by a "straight simple switch from east to west?"

A. All of the in-bound loads come from the Wabash
112 at the east part of the plant, together with all of the in-bound empty tank cars. The only out-bound movement at the east gate, or the east end of the plant, is the empty cars from the elevator that are in excess of the cars we might use for loading in the plant. Other than that the bulk of the traffic is to the west, all of the out-bound loads going out the west gate.

By Exam. KING:

Q. They bring them in at the east end; loads come in from the east end mostly?

A. All of the loads come in from the east end, 100 percent of them.

Q. Then the out-bound loads go out the west end?

A. The out-bound loads go out the west end.

Exam KING. I see.

The WITNESS. The other situation on the east end is this: empty tank cars come in at the east end. The only thing going out at the east end is where we may have some empties. That is all part of our plan to comply with the Commission's general order.

By Mr. THOMAS:

Q. The Wabash keeps separate, does it not, the selection of the various shipments from and the delivery to the various lines; it keeps separate that operation and the distribution of the cars within the Staley plant?

A. I do not get the question.

Q. Well, in other words, they have a transfer engine that operates exclusively outside of the yard in collecting cars, or
113 shipments from the various roads, and bringing them to the Staley plant, do they not, and interchange engine, so-called?

A. I do not know whether they do or not. I do not think, in all instances—I am not sure. I do not know what their operation is.

Q. What I mean is there is a distinction there; the engine that does the spotting, or the engines that do the spotting, within the plant work exclusively within the plant?

A. No. They do classification work outside of the plant. That is the reason for the large reduction in engine hours, because they go outside to classify.

Q. Do you know where the classification is done on shipments that come in over other lines than the Wabash? Is that done by the Wabash or in the yards, the respective yards of the other carriers?

A. All in-bound loads coming into the Staley plant, moving road haul into Decatur via other than the Wabash Railway, are handled from the interchange tracks in the vicinity of the passenger station, except the Illinois Terminal interchange tracks at Fairview Park, into the Wabash make-up yards for classification, primarily in——

Exam. KING. I want this clear in the record. Identify those yards.

The WITNESS. Primarily in the east yard, which is equally divided by about 32nd Street.

114 By Exam. KING:

Q. That is outside of the Staley Company plant?

A. It is outside of the Staley Company plant; yes, sir, Mr. Examiner.

Exam. KING. Mr. Reporter, read the last answer of the witness, and let us see if we have it clear on the record.

Mr. THOMAS. Primarily to the running tracks——

Exam. KING. Just a moment. Let me get this straight. Read that answer of the witness please, Mr. Reporter.

(Answer read.)

Exam. KING. Is that the way you wanted it?

The WITNESS. Yes.

Exam. KING. Very well. Proceed.

By Mr. THOMAS:

Q. In the movement of the loads to points of unloading within the plant, and the taking out of the loaded cars from such points, is it not a fact that these cars move over the same tracks which serve the various other loading points within the plant?

A. I do not follow your question.

Exam. KING. Read the question.

(Question read.)

A. I do not understand what you are talking about.

Mr. THOMAS. Very well. I will reframe it.

By Mr. THOMAS:

Q. You have presented a number of exhibits this morning which show specific parts of your plant.

A. That is correct.

115 Q. You have shown or testified that the movement of cars to and from those points is just a simple in-and-out movement, have you not?

A. That is right.

Q. Is it not a fact that those various portions of the plant which you have shown on these exhibits are in fact set in among numerous other portions of the plant and that ingress to and egress from each of said portions is through tracks which lead to other portions of the plant?

A. Well, if I understand you correctly, there are certain lead tracks that connect those various loading tracks.

Q. Yes.

A. The lead tracks may go to various loading tracks.

Q. Those particular loading points, as illustrated by you, do not have individual loading lead tracks out to the places where the cars originally come into or are taken from the Staley yards, do they?

A. I still do not understand what you are talking about.

Mr. BURCHMORE. That is already shown by these exhibits we have introduced, Mr. Examiner.

Mr. LA FORGEE. He is simply muddying up the record by trying to explain what is perfectly patent on the face of the plats introduced in evidence.

Exam. KING. Let us get this just as clear as we can in the record.

116 Mr. BURCHMORE. All right.

Exam. KING. If he can clear it up any, let us go ahead.

Mr. THOMAS. My idea was simply to see if this witness recognized what counsel says is clear from the record.

The WITNESS. All right, Mr. Thomas. Let me give you an example that will help you a little bit.

Mr. THOMAS. I would like you to answer the question.

The WITNESS. What was the question?

By Mr. THOMAS:

Q. I asked you whether or not these individual loading points are not served by tracks——

Exam. KING. Which ones do you have in mind now, Mr. Thomas?

Mr. BURCHMORE. That is the idea.

Mr. THOMAS. I will take, for instance, a loading point——

Exam. KING. Take your grain elevator first, elevator C.

Mr. BURCHMORE. That is not true of elevator C. That is the trouble. What he is asking about is not true of elevator C. It is true of the coal pile which is all intrastate.

Mr. THOMAS. All right. Let us refer to buildings 16, 17, and 20. Take buildings 16, 17, and 20.

Exam KING. That is one location.

Mr. THOMAS. That is one location.

By Mr. THOMAS:

Q. I will ask you whether or not that location is not served by lead tracks, which is also served by a number of other loading and unloading points?

Mr. BURCHMORE. Just a moment, please. Mr. Reporter,
117 read that question exactly as Mr. Thomas said it.

(Question read.)

Mr. Thomas. Mr. Reporter, you misunderstood me.

Mr. BURCHMORE. That is exactly what you said, Mr. Thomas. That is why I asked the reporter to read it.

Mr. THOMAS. I meant to say, lead tracks which also serve a number of other loading and unloading points.

Mr. BURCHMORE. Answer that question, Mr. Burwell.

The WITNESS. I am inclined to think the answer is "No." However, I still do not understand the question.

Mr. BURCHMORE. I think the answer is "Yes."

The WITNESS. All right.

Mr. BURCHMORE. I think that is what he wants.

The WITNESS. I will say "Yes" if he can make me think it is "Yes."

Mr. THOMAS. I will reframe the question.

Mr. BURCHMORE. I think that might be a good idea.

By Mr. THOMAS:

Q. Does not the lead track which connects with the track serving buildings 16, 17, and 20 also connect with loading tracks which serve other portions of the industry?

A. The lead track serving 16, 17, and 20 buildings connects with the lead east thereof, and that same lead track enters into other tracks serving buildings 29 and the oil refinery, if that is what you mean.

Q. That is right.

118 A. The answer is "Yes."

Q. In substance, that applies to these other specific points of loading and unloading which you have referred to in your direct examination, does it not?

A. That might be more or less true, depending upon what other plant you are going to serve.

Q. Is there any more or less interference by the factory or industry processes or work with the spotting of cars at points of loading and unloading within the Staley plant than existed at the time the Staley Company was doing the spotting at its own expense?

Mr. BURCHMORE. I want to object to that question as being manifestly unfair, for this reason: I take it from the Examiner's

ruling, you would not permit us to go into the question of the correctness of the Commission's findings of interference as applied to the year 1935 or 1936. If permitted to do so, we would have a considerable amount of testimony showing the lack of any such interference as his question presumes in 1935 and 1936. If we are not allowed to go into it, I think he should not be allowed by a kind of hook question to presume, and get this witness to testify as to interference existing in 1935 and 1936. Let him ask whether there is any interference. Ask him first, if you insist on your question, what interference there was in 1935, and he will give you a nice answer to that. I think Mr. Thomas' question is a very unjust question.

119 Exam. KING. I think your question could be a little differently framed, Mr. Thomas, although I am not sure. Would you read it please, Mr. Reporter?

Mr. THOMAS. I will withdraw that question. I do recognize it was an attempt to get this witness' conception of it today compared with the Commission's conception of it some other time. Mr. Burchmore's point is well taken.

Mr. BURCHMORE. That is fine. I am so happy.

Mr. THOMAS. May I have a moment to look over my memoranda, Mr. Examiner?

Exam. KING. Yes.

By Mr. THOMAS:

Q. In the petition for reconsideration it is alleged that the Staley Company is required to pay the Wabash for delivering cars upon interchange tracks, upon tracks which the Commission had in its report found to be interchange tracks; can you——

Mr. BURCHMORE. Where is that?

Mr. THOMAS. I will have to find it in here.

Mr. BURCHMORE. That petition was denied, and the facts to which I think he is alluding have changed.

Mr. LA FORGEE. Furthermore, if your Honor please, the petition was filed with a view to securing a rehearing. That was granted. As far as this hearing is concerned, it is very respectfully submitted that it is out of this case. We are hearing it upon

120 the strength of the order and issues specified by the Commission, as to what this hearing shall proceed to be.

Exam. KING. That is correct. I thought he was trying to locate some tracks here.

Mr. LA FORGEE. That will be all right.

Mr. BURCHMORE. That situation has changed since the date of the petition. The petition is dated March 16, 1938. This relates to a transaction which occurred in September 1937, as I recall it.

Mr. THOMAS. Let me withdraw that question.

Exam. KING. Ask your next question.

Mr. THOMAS. I will ask you this:

By Mr. THOMAS:

Q. At the top of page 3 of the Staley Company's petition for rehearing—do you have that, Mr. Burchmore?

Mr. BURCHMORE. Yes.

Q. (Continuing.) It is alleged that the railroads are exacting $2.27 terminal charge per car in addition to freight rates on cars into which the petitioner is loading the freight, or from which it is unloading the freight on said interchange tracks. I will ask you if that condition exists at the present time?

A. It does not.

Q. It does not?

A. No. You are referring now to the loading of freight on the interchange tracks?

121 Q. Yes. I am referring to the loading of freight on the interchange tracks.

A. There was some loading on those tracks. That situation does not exist at present.

By Exam. KING:

Q. Those are the tracks that are no longer under your control, is that right?

A. That is right.

Mr. BURCHMORE. That is right.

Mr. LA FORGEE. That is correct.

The WITNESS. There was some loading on those tracks.

Exam. KING. Are there any further questions?

Mr. THOMAS. That is all the cross-examination I have.

Exam. KING. Is there any other cross-examination?

(No response.)

Exam. KING. Have you anything further, Mr. Burchmore?

Mr. BURCHMORE. Yes.

Re-direct examination by Mr. BURCHMORE:

Q. You spoke of classification, in response to Mr. Thomas' question, the classification work done by the Wabash Railway in its general yards, which you described adjacent to its main running tracks, and situated north of your plant. Does the Wabash Railway in those same and adjacent yards classify cars of freight going to other industries?

A. To other industries?

Q. Yes.

122 A. In the same yards; yes.

Q. So the classification work of your cars—and I suppose you mean by that, the separating out of cars of coal from cars

of soybeans and so forth—for your plant is done by the Wabash in its general yards just as it classifies cars of different commodities for other shippers?

A. We will assume that the Wabash would handle into Decatur tonight from Blue Mound, for instance, soybeans for A. E. Staley Company and soybeans for the Shellabarger Grain Products Company. This train would be taken up and classified as to Shellabarger's and Staley's.

Q. One car in that train would go to the Shellabarger Grain Products Company, one car would go to the A. E. Staley Manufacturing Company, and another car might go to the Wabash repair shops?

A. That is right.

Mr. BURCHMORE. That is all.

The WITNESS. It is merely a breakup yard.

Mr. BURCHMORE. That is all.

Mr. LA FORGEE. That is all.

Exam. KING. I do not know whether I have this clear in my mind or not.

By Exam. KING:

Q. Do the Wabash engines which do all of the switching inside of your plant, say to the oil refinery, the starch houses, and
123 the coal dock, bring those cars in here from the classification yard and spot them?

A. I am not sure about the inbound cars. I do know that on outbound cars to the west gate, the same engine that takes the car from the loading platform will take it out in the yards and make the subsequent interchange, for instance, to the Illinois Central, in connection with a car that might be going to Memphis.

Q. Do these same engines that do the classification work out here for your company and for Shellabarger and for the other plants, in addition to classifying them, bring them in the plant and set them at the oil refinery, the coal dock, and so forth, do you know?

A. I do not know positively; no.

Mr. THOMAS. What was the answer, please?

The WITNESS. I say, I do not know positively. My impression is that the engine that puts the cars in at the east end of the plant does not render any service to the oil refinery, or west thereof.

Mr. BURCHMORE. That is your impression?

The WITNESS. That is my impression of the service, what the service is.

Mr. BURCHMORE. I would like to ask you one question right there.

Exam. KING. Just a moment, please.

Mr. BURCHMORE. Yes.

By Exam. KING:

124 Q. Now, then, do they have one engine that works the west end of your plant, one or more engines that work the west end of your plant, and then other engines working the east end? Is that the way it is done?

A. I do not know. It is my impression, however, that there might be a number of different engines bringing cars through this east gate into the plant from the east to the west. Most of this work in here is done by merely shoving the cars on to these tracks, and the subsequent work is done by car pullers.

Q. At the elevator, now?

A. At the elevator. It is my impression that this engine in here [indicating] goes out over this southern track to pick up inbound loads of bags and barrels.

Q. It goes clear out in the Wabash classification yards?

A. No; Staley's yard at the elevator.

Q. In that case, those cars would be brought into the elevator by one engine and then this second engine would take them over to the main part of the plant?

A. This relates to inbound loads. That is my understanding.

Mr. BURCHMORE. Not the Staley yard; it is the Wabash yard, is it not? I cannot see what you are pointing to.

The WITNESS. He is pointing to the Staley yard.

Exam. KING. I am pointing to the Staley yard. I want to know if that is correct.

By Exam. KING:

Q. Is that correct, Mr. Burwell? That is what you said.

125 Mr. BURCHMORE. I want to know, if the Examiner please——

The WITNESS. I am saying that is my impression. Mr. Haney is here, and he is perhaps more familiar with that than I am.

Mr. BURCHMORE. What he is saying does not mean anything to us if we cannot see where these fingers are being placed.

Exam. KING. I mentioned the elevator.

Mr. BURCHMORE. I am talking about the record here, Mr. Examiner. When we come to examine the record, this description will not be clear unless we have something more definite.

Exam. KING. That is my idea. I think that shows in the record. I was speaking of the tracks alongside of elevator C.

Mr. BURCHMORE. All right.

Exam. KING. That is what he says. If that is not correct, let us get it right.

The WITNESS. I am under the very definite impression that a number of different Wabash engines bring in and place on the Staley tracks in the vicinity of the large elevator C, inbound grain and other inbound loads and empty tank cars and that the engine

which comes in to serve the plant from the west ultimately goes out and brings into the plant those cars that are not to be unloaded in the elevator.

By Exam. KING:

Q. These tracks here at elevator C are practically the same, or in the same group of tracks and in the same yard as the Commission designated as interchange tracks in the former case, are
126 they not? This is what was called the interchange yard in the other case [indicating], those tracks north of the elevator, is that right?

A. The outbound interchange track to the Wabash was located north on the map between a line marked on the blueprint as East Line Section 12 and Moser Road.

Q. Where is Moser Road?

Mr. BURCHMORE. Let the reporter read that answer, please. I could not hear what the witness was saying.

Exam. KING. Read the answer.

(Answer read.)

Mr. BURCHMORE. You said it was, or is?

The WITNESS. It was.

Mr. BURCHMORE. It was.

The WITNESS. It was, at the time of the hearing.

Mr. BURCHMORE. All right.

By Exam. KING:

Q. Those are some of the tracks that have been turned over to the Wabash now?

A. That is right.

Q. At the time of the former hearing, those were used as interchange tracks?

A. This one track which I just described was the outbound interchange track. It is no longer used as such. All of the interchange work is done at the west end of the property. It is a straight east to west movement, a flow of traffic from the east to the west.
127 All of the loads going to the Wabash Railway in 1932 were handled out over this track which has been spiked.

Exam. King. Yes. That is right.

By Exam. KING:

Q. Now, then, the tracks today that you bring these cars in on and set them out where they are picked up by the second engine are the tracks just south of where they formerly were put, is that right—or is it?

A. They are south.

Q. It is in the same group of tracks?

A. You are talking about inbound or outbound?
Q. Inbound.
A. Just south of those former tracks; yes.
Exam. KING. All right.
Mr. BURCHMORE. Let me ask you this:

By Mr. BURCHMORE:

Q. Are those red tracks or white tracks you are talking about on the map now?
A. The cars are now placed on tracks shown on the map in white.
Q. South of the elevator?
A. East and south.
Q. Then there is a second movement by a Wabash engine which comes along later?
Exam. KING. Just a moment. This is south [indicating].
The WITNESS. Well, east and south.

By Exam. KING:

Q. Where is there any track south of the elevator?
A. North of the elevator, I should have said.
128 Exam. KING. That is right.
Mr. BURCHMORE. If that is a fact, strike that.

By Exam. KING:

Q. There are no tracks south of the elevator, are there, Mr. Burwell?
A. I would like to make a correction. The cars inbound come in on the red tracks north of the elevator; that is, except corn for unloading. Bags, barrels, boxes and so forth are placed on these red tracks north of the elevator.
Q. Those red tracks are the tracks that have recently been turned over to the Wabash?
A. That is right. The engine goes out into the Wabash yards, gets those loads, and brings them in.
Q. So the real change there is that the Wabash has control of those tracks, is that it?
A. They have complete control of all of those tracks.
Q. As far as the physical operation is concerned, that is about all the change, is it not?
A. No. Outbound loads were formerly——
Q. I am talking about inbound, now.
A. On inbound loads the Wabash has some slight change—that is, there has been some slight change in that they have built a track leading into the old loading track in connection with the Illinois Central, the Illinois Terminal and the Pennsylvania. In 1932

the Wabash could only serve the northern track of this group of six. The only way they could serve these others
129 was to head in here [indicating] and back up. Now they have constructed a lead into here [indicating] so they can head into all six of those tracks.

Q. That lead you speak of is down at the east end of the yard at elevator C?

A. Just east of 32nd Street, about where your pencil now is.

Q. Yes.

A. They can head into all of those tracks, where it used to be that they could only head into the north track of the six.

Q. In 1932 they brought inbound cars in here and set them out on one of these tracks?

A. On one of them; the northern track of that group.

Q. At the elevator?

A. At the elevator.

Q. Then the Staley yard engine—or the Staley engine took them on through the plant?

A. That is right.

Q. Nowadays the Wabash engine brings them in on one of that same group of tracks?

A. Yes. They might bring them in on one of the six tracks, yes.

Q. Now the Wabash engine takes them on over to the main plant.

A. Yes.

Exam. KING. I think that is all I have.

Mr. BURCHMORE. I have one or two more questions.

By Mr. BURCHMORE:

130 Q. Now, in 1935 and in 1931, that movement from the yard tracks in your plant to the points of loading and unloading was done by a Staley engine at the convenience of the Staley Company, at the time the Staley Company wanted it done, is that right?

A. From the time of the hearing up until July 9, 1936; yes.

Q. Yes. Now, at the present time who says how and when and in what way these cars shall come in, you or an official of the Wabash?

A. The Wabash Railway, bringing them in at their convenience.

Q. Does it make any difference to you how they do it or when they do it, so long as it is convenient to them?

A. It does not.

Mr. BURCHMORE. I argue that that is a change.

By Mr. BURCHMORE:

Q. Now, these six tracks colored in red immediately to the north of the receiving shed of the Staley elevator C used to be known as Burwell yard; is that correct?

A. That is correct.

Q. They were part of the Staley Company's plant track and facilities in the past?

A. They were, up until acquired by the Wabash.

Q. And they were used exclusively for the Staley Company's business and in connection with its traffic and transportation?

A. That is correct.

Q. Now, are they part of your facilities or of the Wabash facilities?

131 Mr. THOMAS. I object to that as calling for a conclusion of the witness.

Mr. LA FORGEE. That is calling for a fact.

Mr. BURCHMORE. I am asking him to state a fact.

Exam. KING. Go ahead.

By Mr. BURCHMORE:

Q. How are they used and usable?

A. They are used by the Wabash Railway as part of their general yards.

Q. Particularly for the Staley Company, or indiscriminately for all patrons and for all uses they wish to make?

A. They use them for other than the Staley Manufacturing Company. They store company coal on there, and there are a number of other uses to which they put those tracks.

Q. You spoke of a new lead built in by the Wabash. That leads me to ask you this: are there on this map, exhibit 2, a number of other pieces, at least, of new track which were not in existence in 1936?

A. Well, subsequent to December 10, 1937, both the Wabash and the Staley Company, the two combined, spent approximately ten thousand dollars in making new connections at both the west and east end of the property.

Q. Who designed those new connections?

A. Staley's engineer in conjunction with the Wabash engineer.

Q. Were they designed to facilitate the inbound and outbound movement of freight?

132 A. They were designed to simplify the switching and reduce the number of engine hours in the plant.

Mr. BURCHMORE. That is all.

Mr. THOMAS. I have one more question.

Re-cross examination by Mr. THOMAS:

Q. Mr. Burwell, how do you know that the Wabash uses those tracks recently acquired from the Staley Company for uses other than Staley shipments?

A. I spent a little time out in the yard in the preparation of this case. I found some cars out there that did not belong to A. E. Staley Manufacturing Company.

Q. How many times were you out there? In how many instances did you find such non-Staley cars?

A. I think I was out there once with Mr. Burchmore and once with myself.

Q. Twice?

A. I think so.

Mr. BURCHMORE. Once in good company and once in bad.

By Mr. THOMAS:

Q. That is the extent of your knowledge of their use?

A. That is right. I did not spend much time in the yard.

Mr. THOMAS. That is all.

Mr. BURCHMORE. That is all I have.

Exam. KING. Are there any further questions of this witness?

133 (No response.)

Exam. KING. You are excused, Mr. Burwell.

(Witness excused.)

Exam. KING. Have you another witness, Mr. Burchmore?

Mr. BURCHMORE. Yes. Mr. Haney.

Exam. KING. Be sworn, Mr. Haney.

E. HANEY was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. What is your full name and the city where you reside?

A. E. Haney, Decatur, Illinois.

Q. What is your connection with the Wabash Railway?

A. Superintendent.

Q. What portion and about how many miles of the railroad are under your jurisdiction?

A. On the Decatur division, which operates practically all of the Wabash in the state of Illinois, a little over 700 miles.

Q. You run from Hannibal and Quincy on the west to Chicago and Danville?

A. That is right.

Q. On the east.

A. That is right.

Q. Is Decatur an important point of the system and of your division?

134 A. Yes, sir.

Q. Is there a large amount of through traffic moving through there over the various lines to those points?

A. Yes, sir. We are the hub of the wheel at Decatur on the Wabash.

Q. I want to ask you a question or two about the Staley Company. Are you familiar with the plant and the method of handling its business?

A. I am familiar with the handling of cars to and from the A. E. Staley Manufacturing Company. I am not familiar with the Staley plant.

Q. Directing your attention to the map, exhibit No. 2, there is shown thereon certain tracks colored in red at the north, just at the north of elevator C, which were formerly at least known as Burwell Yard, six tracks in number.

A. Yes.

Q. Are you familiar with those tracks?

A. Yes.

Q. What use is the Wabash Railway making of those tracks in the yard?

A. They make use of them in making deliveries to, in the way of loads, tank cars. We have also used them to store cars on that we did not have room for in our east yard.

Q. Are you using them in your general business as a carrier, aside from any Staley traffic?

135 A. We are.

Q. Did you hear Mr. Burwell's description of the deliveries you accord the Staley plant?

A. Yes, sir.

Q. Did he correctly describe the present service you accord that industry?

A. I think he did.

Q. Are you familiar with the Mississippi Valley Structural Steel Company?

A. Yes, sir.

Q. Do you have any personal connection with the business except as it is a shipper of freight or receiver of freight over the Wabash Railroad?

A. That is all.

Q. Do you deliver shipments at the present time to that company?

A. Yes, sir.

Q. How do you deliver them?

A. Using the Staley tracks from the west, moving direct into the Mississippi Valley Structural Steel Company.

Q. Do you place the cars in that industry at the loading and unloading points?

A. Yes, sir.

Exam. KING. Just a moment, please. Can you trace the movement to that plant from elevator C, or somewhere like that, Mr. Burchmore, please?

136 Mr. BURCHMORE. Yes.

By Mr. BURCHMORE:

Q. Take a shipment of coal or steel coming into Decatur over the Wabash Railway, intended for the Mississippi Valley Structural Steel Company, coming in, we will say, from St. Louis.

A. Yes.

Q. How would that be handled physically by your railroad?

A. You will notice a red line— —

Q. That is, to the Mississippi Valley Structural Steel Company.

A. You will notice a red line diverging off at Jasper Street.

Q. Near the extreme left of the blueprint, exhibit 2.

Exam. KING. Now let us get this on the record, how that would be done.

Mr. BURCHMORE. All right.

Exam. KING. Just explain that so it will be perfectly clear in the record.

The WITNESS. Cars for the Mississippi Valley Structural Steel Company would be received in what is known as our east-bound yard, classified, brought back to Jasper Street and dropped directly into the Mississippi Valley Structural Steel Company on that move.

By Mr. BURCHMORE:

Q. Where is this east bound yard you spoke of?

A. Just north of the Staley plant; and the connnection is west.

Q. South of your locomotive shops?

137 A. South of the locomotive and roundhouse.

By Exam. KING:

Q. Then they would be brought back to the point here marked "subway"?

A. That is right.

Q. And moved directly along the south track next to the Baltimore & Ohio Railroad right of way?

A. Yes.

Q. And into the Mississippi Valley Structural Steel plant?

A. Yes.

Mr. BURCHMORE. Do you place—pardon me, Mr. Examiner.

By Exam. KING:

Q. The outbound movement would be just the reverse of that, is that correct?

A. The outbound movement would be the same way, only it would come out.

Exam. KING. Proceed, Mr. Burchmore.

By Mr. BURCHMORE:

Q. Do you place cars at the Mississippi Valley Structural Steel Company on the track and at the point within that plant where the plant wants them for unloading or loading?

A. Yes, sir.

Q. Do you know whether you make any charge for that placement?

A. We do not.

Q. Do you know what it costs you?

A. No.

Mr. THOMAS. I object to that as immaterial.

138 By Mr. BURCHMORE:

Q. You mean, it does not cost much?

A. (No answer.)

Exam. KING. What was that question, Mr. Reporter?

(Question read.)

Mr. THOMAS. He has testified that they make no charge for delivery to the Mississippi Valley Structural Steel Company. Then he asks him what it costs them to deliver to the Mississippi Valley Structural Steel Company.

By Exam. KING:

Q. Do you know? Do you know what it costs?

A. No, sir; I do not.

Exam. KING. All right.

By Exam. KING:

Q. While we are on that point, on the Mississippi Valley Structural Steel Company, at the time of the former hearing, how did those cars move into the plant, do you know?

A. With the exception of this small connection at Jasper Street, we went down through this connection here [indicating].

Mr. BURCHMORE. Just a moment.

The WITNESS. That would be shown as Woodford Street.

Mr. BURCHMORE. That is not true, in the former hearing.

By Mr. BURCHMORE:

Q. Was not the spotting performed by the Staley Company?

A. I do not know about your former hearing. I was not present at that hearing.

Mr. BURCHMORE. All right.

The WITNESS. I am sorry,

139 Exam. KING. Proceed.

Mr. BURCHMORE. I might say this, that at the time of the former hearing I think certain records showed that the Staley Company was performing spotting service at the Mississippi Valley St. actural Steel Company.

Exam. KING. Taking cars from the Burwell yard, from what you call the Burwell yard, down through the Staley plant.

Mr. BURCHMORE. Yes. And receiving an allowance which the Commission condemned.

Exam. KING. Proceed.

By Mr. BURCHMORE:

Q. Do you happen to know, by the way, how the Baltimore & Ohio Railroad gets into the Mississippi Valley Structural Steel Company?

A. They have a direct connection.

Q. Is there a direct connection at the west end of the Mississippi Valley Structural Steel plant?

A. Yes.

Q. Please state whether in your opinion—strike that. Is the present method and practice by which the Wabash Railway is delivering cars in the Staley plant and taking cars from the Staley plant, in your opinion, as an operating officer of this division, a method which is convenient to the Wabash Railway?

A. Yes, sir.

Q. Is it an economical method?

A. At the present time.

140 Q. Are there in your opinion any interferences or interruptions that prevent the work of your engines being continuous, economical and efficient?

A. Not at the present time.

Q. At the present time is the Wabash Railway delivering carload freight and receiving carload freight to and from the Shellabarger Grain Products Company plant?

A. Yes, sir.

Q. Where are those shipments classified by your engines?

A. In our make- and break-up yard.

Q. Your general public make-up yard?

A. Yes.

Q. Is that the same yard that is used on Staley traffic?

A. Yes.

Q. Do you know how the service rendered at the Shellabarger plant compares with the service you render at the Staley plant?

Mr. THOMAS. I object to that as immaterial and outside of the scope of the inquiry here.

Exam. KING. It is beyond the scope of the investigation, Mr. Burchmore. I will sustain the objection.

By Mr. BURCHMORE:

Q. When the cars of in-bound freight for the Mississippi Valley Structural Steel Company, A. E. Staley Manufacturing Company, and the Shellabarger Grain Products Company and other patrons reach the break-up yard, then how are those cars handled in the break-up yard, which move down to Shella-
141 barger Grain Company, for instance?

Mr. THOMAS. The same objection.

Mr. BURCHMORE. It is a different question entirely.

Exam. KING. Yes. Go ahead.

The WITNESS. Shall I answer that?

Mr. LA FORGEE. Yes. The Examiner says you may answer it.

The WITNESS. We would move the Shellabarger cars east to Brush College Road, cross over two main tracks, move back west and then back east, to make delivery to Shellabarger. On the Staley cars we would make one move to the east and one move back, and then straight into the Staley yard.

By Mr. BURCHMORE:

Q. Does the same engine serve the Shellbarger plant that serves some of the Staley points?

A. It might or might not.

Q. It might be the same engine?

A. It all depends upon the amount of traffic at the time delivery was made.

Q. Could you state approximately the difference in distance, if any difference, in placing two loads, one to Shellabarger and one to Staley?

A. Talking of the two elevators, there would be approximately a little over one-half a mile.

Q. Which is the greater distance?

A. To Shellabarger.

Q. How many grain elevators are there on the Decatur
142 division of the Wabash Railway under your supervision?

Mr. THOMAS. I object to that. It is outside of the scope of the hearing, if the Examiner please.

Exam. KING. That does not have anything to do with changed conditions, Mr. Burchmore.

Mr. BURCHMORE. I am prepared to show by this witness first the existence and second the track conditions and third the service rendered in the placement of cars at—I think the number is 153 elevators on the Decatur division of the Wabash Railway,

including particularly elevators at Sibley, Alexander, New Berlin, Moredosia, Stonington, Morrisonville, Harvel, Palmer, the power mill of the Pillsbury Company at Springfield, the Decatur Milling Company mill at Decatur and the King Milling Company at Pittsfield, to the end that they receive the service of placing cars at the points desired for loading and unloading without any charge, with a service which I would be prepared to have the witness compare with the service rendered at Decatur. I understand that that offer is overruled—or rather, the offer is refused and the objection sustained to it?

Mr. THOMAS. I certainly object to it.

Exam. KING. It will be sustained.

Mr. THOMAS. That is, I would object to it.

Mr. BURCHMORE. I desire to say that I asked the Wabash to have their superintendent made available for this purpose. I discussed the matter with him, and he is prepared to testify
143 on these points.

Exam. KING. Could this witness tell us about that easement with the Wabash, Mr. Burchmore?

Mr. BURCHMORE. No; but we will in a minute, I think, by stipulation, tell you about it.

Exam. KING. Very well.

By Mr. BURCHMORE:

Q. Now, from your years of experience in transportation matters on the Wabash Railway, and your knowledge as an operating man, please say whether or not you regard the service rendered at the Staley plant and the imposition of a charge for that service of $2.27 or $2.50 per acre as consistent with the service rendered to other patrons of the Wabash without charge.

Mr. THOMAS. That is objected to as immaterial and irrelevant, and calling for an opinion of this witness outside of the scope of the investigation.

Mr. LA FORGEE. Pardon me, if your Honor please—

Mr. THOMAS. This is a determination which should be made by the Commission after a full hearing. A mere statement by an expert I submit is irrelevant and immaterial.

Exam. KING. He cannot answer all of that question, but there is one thing I would like to know. Read the question please, Mr. Reporter.

(Question read.)

Mr. BURCHMORE. I endeavored to bring the facts out by
144 this witness upon which the Commission could determine such a question, but that offer was refused. He as an expert knows what they are doing generally, and knows whether that is—at least in his opinion and in his judgment as an expert—

consistent with the changes now shown here. It was consistent, I would say, with what was done for Staley in 1936.

Mr. La Forgee. If the Examiner please, I would like to say——

Exam. King. I think that would go way beyond the scope of this order, Mr. Burchmore.

Mr. La Forgee. Here is a man who is the superintendent. It is not a conclusion. He knows the actual fact as to what is being done, and what is being done for others.

Exam. King. If his testimony can be taken on that, if it were going to be worth anything, I think we ought to go into all of the facts about all of the other places.

Mr. Burchmore. Yes.

Exam. King. We have rejected that. We cannot take this.

Mr. Burchmore. I want to be understood as noting an exception to all those rulings.

Exam. King. The record may show that you have an exception to all of the rulings.

Mr. Burchmore. Your Honor asked about the easement.

Exam. King. Yes.

By Mr. Burchmore:

145 Q. Do you know, Mr. Haney, about the Wabash easement to reach the Mississippi Valley Structural Steel Company plant?

A. You mean prior to, or now?

Exam. King. What I would like to know is by what right does the Wabash reach the Mississippi Valley Structural Steel Company through the Staley plant or over Staley tracks.

Mr. Burchmore. As I understand it, there is a contract between the Wabash Railway and the Staley Company which gives the Wabash Railway an easement along the south line of property of the Staley Company at any time they desire to construct a track, construct and lay a track and operate that track into the Mississippi Valley Structural Steel Company plant. Now, they have never excercised nor had occasion to exercise that easement, because the Staley Company has a track there which the Wabash has been using, but if the Staley Company refused longer to permit that use of that track, Staley could take the track up, and thereupon under the easement the Wabash could lay a track of its own along that ground. I believe that is substantially the situation.

Mr. Thomas. Mr. Strasser is here.

Mr. Strasser. I think that is correct, except for the last portion which Mr. Burchmore added there, as to what would happen if they denied us the use of that track. We claim we have the right to use that track.

Exam. King. There is no question about——

146 Mr. STRASSER. I do not think that is a matter that ought to be brought in to controversy here.

Mr. BURCHMORE. No.

Mr. STRASSER. I do not want that statement to remain unchallenged, if there is any such imputation in your language.

Mr. BURCHMORE. Mr. Stresser, I do not want to take issue with you, nor do I agree with you, not having gone into that matter carefully. However, there is an easement. The exact terms of the easement can be ascertained.

Exam. KING. The Wabash can go into the Mississippi Valley Structural Steel Company.

Mr. LA FORGEE. Yes; by one process or another.

Exam. KING. Yes.

Mr. LA FORGEE. As to whether they are entitled to the right to this particular track or not is not so material as the question of the right under the contract——

Mr. STRASSER. Let me say this: when the Wabash sold that property to the Staley Company, we had our own track into the Mississippi Valley Structural Steel Company. However, when the Staley Company desired to enlarge its plant, we sold them the property on which our track to the Mississippi Valley Structural Steel Company was constructed, but reserved this easement so we could at all times have access to the Mississippi Valley Structural Steel plant. We have guarded that very jealously and zealously. I think that may very recently be assumed to
147 be the situation, notwithstanding the growling at each other now and then.

Mr. LA FORGEE. I think the right exists in the Wabash Railway Company to go into the Mississippi Valley Structural Steel Company. As I recall it, there is some sort of provision to the effect that the new right-of-way if one is ever laid, is to be laid with the approval of the Staley Company across that ground.

Exam. KING. I think that is sufficient on that.

Mr. STRASSER. May we go off the record?

Exam. KING. Off the record.

(Discussion outside the record.)

Exam. KING. Back on the record.

Mr. THOMAS. It is very, very clear that the Wabash has a right of ingress and egress to and from the steel company's property.

Exam. KING. Very well. Proceed.

By Mr. BURCHMORE:

Q. Mr. Haney, when did you build—or rather, when did the Wabash Railway build into the Shellabarger Grain Company?

Mr. THOMAS. I object to that as immaterial.

Exam. KING. I do not see how that can help us, Mr. Burchmore.

Mr. BURCHMORE. It is a change of condition since 1935.

Mr. THOMAS. Not of the Staley plant.

148 Exam. KING. Not of the Staley plant. However, I would like to know anyhow. How long ago was it?

Mr. BURCHMORE. Some folks get terribly excited about when they built into the Staley plant. I want to know when they biult into it.

By Exam. KING.:

Q. When did they build in there?

Mr. LA FORGEE. I thing Mr. Haney can describe it more particularly by telling the route of the car and the tracks over which it goes, rather than simply having you ask him that question. May I be permitted to suggest such a question?

Exam. KING. What was the question? I did not understand it.

Mr. THOMAS. He asked, when did you build into the Shellabarger plant.

Exam. KING. That is right.

The WITNESS. About two years ago.

Mr. BURCHMORE. That is all on direct.

Exam. KING. You may cross-examine.

Cross-examination by Mr. THOMAS:

Q. Mr. Haney, under what circumstances did the Wabash Railway lease from the Staley Company these tracks, the six tracks immediately north of elevator No. 3?

Mr. BURCHMORE. That is objected to.

By Mr. THOMAS:

Q. State the circumstances of that transaction.

Exam. KING. You mean elevator C do you not, Mr. Thomas?

149 Mr. THOMAS. Elevator C.

Exam. KING. You said "elevator 3."

Mr. THOMAS. I meant elevator C. I beg your pardon.

Mr. LA FORGEE. That is objected to for the reason that it is in writing, and the reasons ascribed to the order by the court determing it. What the witness thinks would be a mere conclusion, in conflict and contradiction.

Exam. KING. Perhaps he might agree with that.

Mr. LA FORGEE. I have not found that this witness agrees with anybody.

Exam. KING. Well, we have better evidence. We will take the best evidence.

Mr. LA FORGEE. Here is the evidence, if your Honor please. I have it right here.

Mr. THOMAS. Let me say this, Mr. Examiner——

Mr. LA FORGEE. I would be very glad to be able to retain the original, but I will give the Commission a certified copy.

Exam. KING. I do not know whether we want it or not. I have not asked for it.

Mr. THOMAS. If the Examiner please, it has been referred to. I think the terms and conditions of this transaction should be before the Commission. I do not know what is in it.

Exam. KING. All right.

Mr. BURCHMORE. In accordance with the rules we will within five days supply the Commission and counsel with true copies.

150 Exam. KING. Very well.

Mr. BURCHMORE. We will furnish copies, which we will certify to be true, of the indenture made and entered into between the Wabash receivers and the Staley Manufacturing Company with the petition and orders approving the same. They speak for themselves. They tell why they approved the same, and they deal with the same. I might say also that the contract, I am given to understand, was authorized by the board of directors of the Staley Company.

Mr. LA FORGEE. I will furnish a certified copy, if you desire, of that resolution.

Mr. THOMAS. Oh, no.

Exam. KING. Are you going to put that in as an exhibit?

Mr. BURCHMORE. We would like to file that as an exhibit within five days.

Mr. THOMAS. I think it should be filed, Mr. Examiner.

Exam. KING. Do you want to give it a number now?

Mr. BURCHMORE. We will be glad to, if the rules permit it.

Exam. KING. That will be exhibit No. 14. We will reserve a place for it as exhibit No. 14.

By Mr. THOMAS:

Q. Did you participate in the negotiations which led up to the agreement which will be exhibit No. 14 when filed?

A. Yes, sir.

Q. When did those negotiations start?

151 A. They started about two days after we took the switching over directly under the Wabash, in December. It was a physical impossibility for us to make this connection with only one track connection, and what was called the Burwell yard.

Q. Was that impossibility applicable only to the switching of cars to elevator C, or did it apply—you say it applied to all the rest of the Staley plant?

A. Directly, yes, sir; unless we came through the west gate, which was congested.

Q. On account of the congestion at the west gate then?

A. It would be very much congested.

Q. The Wabash yards in Decatur and in the vicinity of the Staley plant at that time were not unduly congested, were they?

A. Oh, no; not as far as the yards were concerned. They were mostly congested with empties.

Mr. THOMAS. Off the record.

(Discussion off the record.)

Exam. KING. We will take a five-minute recess.

(Short recess.)

Exam. KING. Come to order, gentlemen. Proceed with your examination, Mr. Thomas.

By Mr. THOMAS:

Q. Mr. Haney, please state how many engines there are and how they are used in connection with shipments to and from the Staley plant.

Mr. BURCHMORE. I did not hear that question. Read it
152 to me Mr. Reporter.

(Question read.)

A. We use two, three, or four engines, all depending upon the traffic to and from the Staley plant. The engines classifying the cars into the Staley plant move direct into the plant. They also move the loads out of the plant, take them into our—what is known as the old eastbound yard, and they again classify them for delivery to all connections. They may take empties back with them as they take the loads over, or vice versa. These engines in some cases make delivery to the connections, but as a general proposition, we use another engine to make the delivery to the connections.

By Mr. THOMAS:

Q. It is customary, then, to use one engine, or, if necessary, engines to collect the cars from the other carriers and move them to the vicinity of the Staley plant?

A. We first take them to our old eastbound yard.

Q. Yes.

A. Where they are classified.

By Exam. KING:

Q. That is the yard south of the locomotive shops?

A. That is right; south of the roundhouse and just east of Jasper Street.

By Mr. THOMAS:

Q. Then how are the engines used in the spotting of these cars from this old eastbound yard to the points within the Staley plant where they are loaded and unloaded?

153 A. They get directions from our yard clerk located at the Staley scale house.

Q. Do you know how that yard clerk gets his directions?

A. He gets his directions from the 20 building, where the information is given to these men in 20 building.

Q. What is the nature of the information which that yard clerk gets?

A. He will tell our Wabash clerk he has a certain given number of cars either of the Illinois Central, the Terminal, Pennsylvania, or Baltimore & Ohio Railroad that he wants in.

Q. That is, the Staley employee will tell your yard clerk that?

A. He will say, "We have this number of cars out there we are looking for," and he will give them the direction of the building they are to go to. Our clerk makes up a switching list and gives it to the foreman.

By Exam. KING:

Q. The engine foreman?

A. Yes, the engine foreman.

Mr. BURCHMORE. Your yard man does that?

The WITNESS. Our yard clerk does that.

By Mr. THOMAS:

Q. He makes up the switching list from directions given him by the Staley employees, does he not?

A. The Staley employee gives him the car numbers and initials and tells him that there are 16 cars of corn on the Illinois Central, or whatever it may be.

Q. Does he not tell him when and where he wants those cars?

154 A. He tells him where he wants them placed.

Q. Please look at those pasteboard forms which are before you there, and state if you recognize those as switching lists for operations within the Staley plant. They have been identified, I think, as exhibits 9, 10, 11, 12, and 13.

A. Yes. That is a switching list like we use.

Q. Yes.

A. I assume that is the identical one.

By Exam. KING:

Q. You mean, that you furnish to Staley?

A. No; that we furnish to our yard foreman.

By Mr. THOMAS:

Q. They are made up by your employee upon directions given him by the Staley employee, is that correct?

A. They are made up at the direction of the Staley plant, that they want certain work done.

Q. Yes. You say they tell them when and where they want the cars?

Mr. BURCHMORE. He did not say that.

Mr. THOMAS. I am asking him if he did.

Exam. KING. He said "Where", Mr. Thomas. He did not say "when."

Mr. BURCHMORE. He said not when.

By Mr. THOMAS:

Q. Did you not ever get instructions as to when you wanted a car delivered—or rather, when they wanted a car delivered?

A. Well, if I understand you correctly, when we get these
155 orders that there are certain cars, we naturally try to make delivery as soon as is convenient without running all over the yard and making special moves.

Q. I see.

A. If that is what you are referring to.

Q. Do you mean by that, that the first mentioned car is assumed to be the one that is first wanted?

A. No, sir. I would say that is in the general run, because we usually get a great many more than one car. If it was only one car, we would not make any special effort to get this one car placed at a particular point.

By Exam. KING:

Q. You just take those cars that are on your list and bring them in, in your next move, is that it?

A. That is absolutely right.

By Mr. THOMAS:

Q. How many engines do you use for this spotting within the plant?

A. We usually have one at a time. We do not like to have more than one in at a time because they might get in each other's way.

By Exam. KING:

Q. Is that engine assigned to this plant?

A. No. It is assigned to—it is what we call in railroad parlance a "bum" engine. I do not know whether you know what that is or not.

Exam. KING. I know what a bum is, but perhaps you had better explain what a bum engine is.

The WITNESS. That is what this engine is. He goes all
156 over the yard wherever we direct him, or wherever he is needed. If he is needed six hours in the Staley plant, that is where he works. If he is needed two hours in the Wabash yard, he works two hours in the Wabash yard. He is not assigned to any particular part of Staley's work. We can send any engine we have in there.

By Mr. THOMAS:

Q. But, as a rule, you do not send the engine in which collects cars from the various roads and brings them to your old eastbound yard?

A. No; we do not.

Q. You do not?

A. No; because if we did—well, we work anywhere from 12 to 14 engines a day, and sometimes 17, and if we used every Tom, Dick and Harry in the Staley plant, I think we would have to have a yardmaster to get the engines out, because he would be sewed in himself.

Mr. BURCHMORE. You use 12 to 14 or 17 engines where?

The WITNESS. In the Decatur yard.

By Mr. THOMAS:

Q. In the Decatur yard generally?

A. Yes.

Q. You keep only one working at a time in the Staley plant?

A. That is what we try to do.

Q. That is what you try to do?

A. Yes.

Q. Do emergencies ever arise where you have to have
157 more than one?

A. Oh, yes. In the grain season, when everybody is shooting grain at you, we have to get them off of our own tracks or we will be blocked ourselves.

Q. What period of time—or rather, I mean, over how many hours of the day do you have an engine in the Staley plant?

A. Well, for the month of May—I just checked this up for my own information—we worked 568 hours in the Staley plant, and had these engines out in our own yard 101 hours. That is about the way it usually runs.

Q. When you say, "in our own yard," do you mean the classification yard outside of the Staley yard?

A. Other than Staley's yard.

Q. Does it include the Staley classification, I mean.

A. Yes; it would include classification out in our yard proper.

Q. All Staley cars as well as cars to other shippers?

A. That is right.

By Exam. KING:

Q. It would all be your own work?

A. Yes, sir; no other work. That is right.

Q. How many crews were involved in those 568 hours?

A. Seventy-eight.

Mr. BURCHMORE. Seventy-eight crew days?

By Exam. KING:

Q. Seventy-eight crew days?

A. That is 78 crews; yes.

Q. Crew days?

158 A. That is for 31 days.

Q. How many different engines or engine crews were involved? That is what I am trying to get at.

A. Well, from the second to the fifteenth there were two crews, two crews that did this work in the Staley yard, and the same thing within our own yard.

Q. Yes.

A. Then from the 16th to the 19th inclusive, there were three crews involved. On the 20th and 21st there were four crews involved. On the 22nd, 23rd, 24th, 25th, 26th, 27th, and 28th there were four crews involved. On the 29th there were three crews involved. On the 30th there were no crews involved. On the 31st there were three crews involved, and on the first of the month there were none.

By Mr. THOMAS:

Q. Does that memorandum indicate the hours, that is, the hours of the day that those crews worked?

A. No. I do not have that on here, but as I recall it, that was, I think, from 6:30 to 2:30, and 2:30 to 10:30. I believe that is right.

Q. That is, on the two shifts?

A. Yes.

Q. Now, when you have four shifts, what would it be?

A. Then it would be 6:30 to 2:30; 2:30 to 10:30; and 10:30 to 6:30.

Exam. KING. Some time during that day there would
159 have to be an extra crew.

The WITNESS. Yes. That would be usually from 8 o'clock to 4 o'clock, 8 A. M. to 4 P. M.

By Mr. THOMAS:

Q. Mr. Haney, the tariff filed by the Wabash fixes the charge for this spotting service in the Staley plant. Does the Wabash have a separate agreement or contract, being more specific, as to the service to be rendered? I mean, something in addition to the tariff. Does it have a contract with the Staley Company as to the service to be rendered?

A. I never heard of one.

Q. You do not know about that?

A. I never heard of any; not that I know anything about.

Mr. THOMAS. That is all I have of this witness, Mr. Examiner.

Re-direct examination by Mr. LA FORGEE:

Q. Mr. Haney, what were the number of hours to which you referred?

A. I did not get that.

Q. I say, what were the number of hours to which you referred?

A. That was the number of hours that the engines actually worked in May 1938.

Q. Your attention was directed to this blueprint which is designated as exhibit No. 2, as I recall it. Where did that labor begin with reference to those cars, in reference to the tracks which are shown on this blueprint?

160 A. As to the first crew involved, it started at the roundhouse located north of the Staley yard.

Q. Then what? Is that what you would call a breakup yard, or——

A. That would be the extreme west end of the breakup yard.

Q. Yes.

A. It was necessary for the engines to leave the roundhouse, move down to Woodford Street, back to Jasper and straight across, moving over the main tracks, getting into the Staley yard.

Q. Did that mean the breaking up of train loads of products and merchandise which came in from various places?

A. We would do that, yes.

Q. Where did that breakup take place?

A. Just east of Jasper Street and what is known as the old east-bound yard.

Q. Of what did that work consist, taking the cars apart?

A. We would tear the train to pieces. There would be cars, in other words, that would be for through movement.

Q. Yes.

A. There would be cars that might go west on our line to Hannibal.

Q. Yes.

A. There would be cars that would go to Chicago. There would be cars cut out for Staley and cars cut out for the Decatur Milling Company.

Q. And cars cut out for the Mueller Company?

161 A. Or any industry located in Decatur.

Q. As a matter of fact, when that engine was engaged in work during those hours, it was breaking up trains for the benefit of the usual shippers who had carloads of freight in those trains, was it not?

A. Correct.

Q. So as a matter of fact when you referred to those working hours, you have referred to the hours employed in part, breaking up trains for the benefit of all people who had cars in those trains, did you not?

A. That is correct.

Q. That involves a computation of the total which you have made upon those figures?

A. That is correct.

Q. Yes. Now, when you had concluded that work, were these cars which were intended for Shellabarger taken over and delivered?

A. At that particular time, no.

Q. At any time?

A. Yes.

Q. Was that part of the service?

A. That is right.

Q. With reference to the cars that were consigned to the Walrus Manufacturing Company, or to the Pherry Company, were they in like manner distributed as part of that same service?

A. That is correct.

162 Mr. THOMAS. We object to that.

Mr. LA FORGEE. They went into the question of what constituted the service. I want to know what it is.

By Mr. LA FORGEE:

Q. And in the same manner did you take cars for Staley, after they had been so classified, and move them up into the Staley yards you described and testified a little while ago?

A. Yes.

Q. That is the movement to which you referred which involved these hours of labor which you have mentioned?

A. That is correct.

Mr. LA FORGEE. That is all.

Exam. KING. Are there any further questions?

Mr. THOMAS. Yes.

By Mr. THOMAS:

Q. You said the first crew took the engine at the roundhouse. Are you alluding to the engine which worked inside the plant, or which collected the cars and took them to the Staley plant?

A. I will have to answer it this way: if we moved the cars from the connection down to our old east-bound yard and shoved them in there, then this engine coming out of the roundhouse might either go to the Staley plant first, or it might go down to our old east-bound yard, pull the loads, take them into the Staley plant, and then either come out with the loads, or do switching in
163 the plant. It might be in some cases it would go direct into the Staley yard, and in other cases it might go direct down into the east-bound yard and bring a cut of loads going direct into the Staley yard. But, usually those come in from either end.

Q. Is it not an exception, however, that the engine brings the cars from the connecting lines to the Staley plant, and also does the Staley spotting within the plant?

A. Not when it comes from the connection.

Q. That is what I wanted to know.

A. No, sir.

Q. Then the one you have just spoken of, taking up its history at the roundhouse, is an engine assigned to do the inside work at the Staley plant?

A. He usually goes right into the Staley plant.

Q. The first crew takes that engine at the roundhouse?

A. Yes.

Q. Where does the second crew get it?

A. In the Staley plant.

Q. That would apply also to a third crew, if a third crew worked on that engine that day, would it not?

A. It would if we possibly could, but we cannot get that engine to work through 24 hours. We have to go to the roundhouse and get coal and water, so usually we do that.

Q. But the hostler brings a relief engine in there when the engine which has been doing the spotting in the Staley plant
164 needs to go back to the roundhouse?

A. We do that during certain periods of the day. We do that from about 10:30 in the morning to 6 o'clock at night. It is not quite 6 o'clock; until about 5:30.

Mr. THOMAS. That is all I have.

By Mr. BURCHMORE:

Q. Is this number of engines that you use and the number of hours the engines are at work attributable to the volume of business in and out?

A. Absolutely.

Q. Suppose Staley increased their number of carload shipments via the Wabash Railroad by 50 percent.

A. Yes.

Q. You would be glad to see that, would you not?

A. I certainly would.

Q. Would you not have to spend some more engine time and switching to do that, with the increased number of cars?

A. We would have to spend plenty more engine hours in our own yard, as well as Staley's.

Q. If Staley got down to a point where they were only receiving two or three cars a day and shipping two or three cars a day, you would not have much engine time on that, would you?

A. No. I imagine it would be pretty bad.

Q. You would save an awful lot of switching time, would you not?

A. Absolutely.

Q. You would soon starve to death with that saving, would you not, Mr. Haney?

165

A. I think we would very soon go out of business.

Q. Is it not, seriously, a very considerable factor in engine time and number of cars that are shipped and received?

A. I would have to have my boss think I was furnishing too many engines over there.

Q. Why do you have to have 17 engines in the Decatur district? Is it not because of the number of cars of freight that are switched in the Decatur district?

A. It is the number of trains run through and switched at Decatur proper.

Q. These engines are all busy handling a large volume of traffic?

A. Correct.

Q. You have less engines at Bement and Springfield because you have less traffic?

A. We have two engines at Springfield and none at Bement.

Q. There is very little traffic relatively at Springfield?

A. Correct.

Mr. BURCHMORE. That is all.

Exam. KING. I have one or two questions.

By Exam. KING:

Q. Mr. Haney, I want you to assume that you have, we will say, six cars to get from your east-bound yard to the oil refinery;

six to the coal dock; and six up to the soya bean plant. How would those cars be handled from your yard around through there?

166 A. We would——

Q. Perhaps you had better refer to Mr. Burchmore's map. I think we can follow it better if you do. Speak clearly so the reporter can hear you.

A. Do you show the 22nd Street viaduct on this map?

Q. Yes.

A. Well, approximately from that point where we would break up this train, we would move east to Brush College Road, approximately Brush College Road. That is the easiest way I can define it. We would move to that lead shown in red, going straight across into the Staley yard, which we described a moment ago as the Burwell yard. We make a straight connection right on through there with the coal dock, moving on up and through the first white track—or the while line, between 22nd Street, close to the Decatur Ice Company there.

Q. Yes.

A. That would be the coal movement. The soybean movement would be approximately on the same line, but the grain, any grain for the yard, would be left down below and shoved in on what we have leased, the Burwell yard. The movement to the refinery would be about in the same direction as the coal. It would be classified and set in those different points as we went up through the yard. However, you have to move from 22nd Street clear on out to Brush College Road in order to make this direct shove through.

167 Q. Would your switchmen classify these cars before they started in there, so they could set off grain at the elevator?

A. Yes.

Q. And then what would be the next place they would set off?

A. They would set off at the refinery.

Q. They would set off their six cars there?

A. Yes.

Q. Then where would they go?

A. They would go on down to the coal dock.

Q. And if they had cars for the starch house, they would go on right down beyond the refinery and set off there?

A. We would set them in at about 22nd Street there, if there was room, and I imagine we would take the other engine down here (indicating), because he would have to run around these cars to do it, because these are stub tracks. These are stub tracks right here (indicating).

Q. If there were cars to move out, would that engine take them on out the west end then?

A. Nothing but empties. He would bring out empties, and the engine working in the west end of the yard would make pick-ups from the other loading tracks, take them out west, take them over in the east-bound yard and classify them and make delivery to connections.

Q. Ordinarily, then, you would have one engine working in moving cars in from the east end of the plant?

168 A. That is correct.

Q. He would take them down to about the middle of the main plant—or down to the main plant, and another locomotive and crew would gather up this stuff from the main plant and move it out?

A. That is absolutely right.

Exam. KING. I think I understand that. That is all.

Mr. THOMAS. I have just one more question, Mr. Haney.

By Mr. THOMAS:

Q. Is it not a fact that the east-bound freight trains are broken up at the east end of the east yard, and the Staley connection into the Burwell yard is used as a track into which Staley cars are kicked?

A. I do not know just what you mean by that.

Mr. THOMAS. Let the reporter read the question to the witness, so he may answer it.

(Question read.)

A. East-bound trains, with the exception of about two percent, are broken up on what we call our old east yard, located just east of Jasper Street, and what is known as the ice-house yard. An occasional drag is pulled clear to the east end, but that is very, very rare, because all of our west-bound trains are yarded at the extreme east end of the yard and broken up at that point. So, it is a very rare case where we break up a train east-bound, in the east-bound yard at the extreme east end.

By Mr. BURCHMORE:

Q. The ice-house yard is opposite the Decatur Ice Company?

169 A. Correct.

By Mr. THOMAS:

Q. It is done sometimes, though?

A. Oh, I would say not now; in the wintertime yes, once in a while; very seldom now.

By Exam. KING:

Q. Is this switching in here any simpler than it was when you took it over? I mean, can you handle the cars with less expense? Has the operation been simplified?

A. We have simplified the handling in the Staley yard to this extent: we were able to take off one engine by making the moves we are doing now. That is, we use one engine less. In other words, if we had to go back to the Staley operation, that they were performing, we would have to put on another engine, because we are now pulling these cars and getting them out of the congestion. One engine is not standing in the way of another engine while he is pulling one or two cars out of a whole drag. The other engine is standing there ready to shove in with a cut of cars to the loading dock. We just move right in there and get down into our own yard, and classify the cars and we have been able to dispense with one engine.

By Exam. KING:

Q. How did you happen to take over the switching for the Staley Company? Were you forced to? Did they make a demand on you to——

A. Well, it was just as though this afternoon they said, "Here it is, fellows. Take it over." We either had to take it or sink, that was all. They did not give us any notification, or
170 anything else. They said, "We are done. We cannot do this work any more." So, we were forced to take it over.

Exam. KING. Are there any further questions?

Mr. THOMAS. Yes.

By Mr. THOMAS:

Q. At the beginning did you follow the method of spotting that the Staley engines had previously followed?

A. Well, I suppose we tried to, as much as we could.

Q. Well, the changes that you have made there are connected largely with bringing the cars into the track, rather than putting the cars at the points of loading and unloading, is that not correct?

A. No, sir; I would not say that, Mr. Thomas. We tried to make a study of it and to get it as near railroad operating conditions as we possibly could. In other words, we thought the Staley methods were not as good as our own. Maybe they were better, but we did not think so.

Q. Do you have any rule in the Staley plant as to specific pulls of any particular track, or service upon any particular loading or unloading track?

A. I never heard of one.

Q. You never heard of one?

A. No, sir; I never did.

Q. You just follow directions?

A. All we do is—they will give us the number of cars, say, from plant 1, 2, 4, 5, or 7, whatever it may be. Those cars

171 are ready and billed, or they may say that the cars will be billed. When our engine goes down by there, he tries to clear out all the cars that are there billed.

QY. You have stated that under the old arrangement sometimes one engine would have to wait while another one would clear.

A. That is true.

Q. For simplification, you have avoided that?

A. Yes.

Q. I presume you think it would be practically impossible for each one of the line-haul carriers serving Decatur to spot its cars within the Staley yard, would you not?

A. I would say it would be suicide.

Mr. BURCHMORE. Do you suggest, Mr. Thomas——

Mr. THOMAS. I am not making any suggestion.

Mr. BURCHMORE. Then you have no responsibility, perhaps.

Mr. THOMAS. That is all.

Mr. BURCHMORE. That is all.

Exam. KING. Are there any further questions of this witness?

(No response.)

Exam. KING. You may be excused.

(Witness excused.)

Exam. KING. Have you anything further, Mr. Burchmore?

Mr. BURCHMORE. That will be all for the Staley Company. I might explain that I have talked with Mr. H. J. Roth, divi-

172 sion superintendent of the Clinton division of the Illinois Central, and was going to call him to testify in connection with the same questions as to which you refused our offer of proof in the testimony of the witness who has just been excused, namely as to other elevators and industries on the Illinois Central, and the service to them, and so forth. However, we will not go through the form of calling him for the reason that you have sustained the objection.

Exam. KING. The record will so show.

Mr. BURCHMORE. That is all.

Exam. KING. Mr. Burwell, I would like to ask you just one or two more questions.

Mr. BURCHMORE. Take the stand again, Mr. Burwell.

T. C. BURWELL recalled, having been previously sworn, resumed the stand and testified further as follows:

By Exam. KING:

Q. Are you satisfied with the switching arrangement you have in here now from the Wabash, except for the fact that you have to pay $2.50 per car for it?

A. We are thoroughly satisfied. We are getting the best switching service we have ever gotten during my service with the company.

Q. It works out better than when you did your own switching?

A. Much better; it is much simpler than it was when we were doing our own switching.

173 Q. If it were not for this switching charge, I take it that you would not want the Pennsylvania, the Illinois Central and the other railroads serving Decatur, to do this switching for you?

A. So far as I am concerned——

Q. You would prefer to have one railroad, of course.

A. So far as this company is concerned, we are perfectly satisfied to have the Wabash continue to do the work. We have, by the way, diverted a large percentage of our traffic to the Wabash by reason of the fact they are in a position to give us better service than the other roads. The other roads are involved in reciprocal switching movement. The Wabash puts the cars in the trains, and they are gone with them. They give us 24-hour service to certain destinations. We are perfectly satisfied. We are getting fine service from the Wabash Railway, and it is the simplest and best we have ever gotten.

Q. Do you still have your locomotive?

A. We have one locomotive that would be serviceable. We recently made an effort to sell it, and could not find a buyer. I might say, Mr. Examiner, for your information, that we only took over the switching with the allowance at the very earnest solicitation of the carriers. We threw it up at one time. They came up and cried on our shoulder and begged us for the opportunity to make another cost study, which resulted in the allowance
174 going up from $1.67 to $1.83. We did not want the allowance and we do not want it now.

Q. Is it not a fact you had no particular motive in keeping your costs down while you were doing your own switching? I mean, you were not forced to simplify that as much as the Wabash, is that right, or not?

A. I think the figures will show we handled these cars, as low as $1.57. per car. We never received more than $1.83. We had nonunion labor. Our cost was much less than they can possibly do the work for.

Q. Do you think that you did operate as efficiently as the Wabash does now?

A. We think we operated very efficiently, yes, sir. Of course, at that time we paid no intraplant switching charge because that was deducted in the terminal allowance setup.

Exam. KING. Very well. That is all.

Mr. BURCHMORE. No further questions.
Exam. KING. You may be excused.
(Witness excused.)
Exam. KING. You have nothing further, Mr. Burchmore?
Mr. BURCHMORE. That is all.
Exam. KING. Have you a witness, Mr. Thomas?
Mr. THOMAS. Yes. Mr. Rice, take the stand, please.
Exam. KING. Be sworn, Mr. Rice.

WALTER S. RICE was sworn and testified as follows:

175 Direct examination by Mr. THOMAS:

Q. State your name and residence.

A. Walter S. Rice, Olathe, Kansas.

Q. What is your business or profession, Mr. Rice?

A. I am service agent for the Bureau of Service, Interstate Commerce Commission.

Q. How long have you been in that business?

A. 21 years with the Interstate Commerce Commission; sixteen years with the Bureau of Service.

Q. You are familiar with the practices, customs and the manner of railroads in handling cars, in spotting service and other service, are you not?

A. Yes, sir; I am.

Q. Did you upon direction of the Interstate Commerce Commission make an examination of physical conditions and methods of operation in connection with the spotting—the delivery to and spotting of cars in the Staley plant at Decatur?

A. I did.

Q. When and over what period of time did you make that inspection?

A. A period of two weeks, ending on April 29th, I believe, it was, of this year.

Q. What did you find—or rather, how did you find that cars consigned to and from the A. E. Staley Manufacturing Company plants were moved into and out of those plants? Just state
176 in a general way the program or procedure followed.

A. Well, the interchanges were as outlined by Mr. Burwell, the I. T. S. interchange being at Fairview, which was two and a half miles west of the passenger station, and the interchanges with the other lines being in the immediate vicinity of the passenger station. From that point the cars were gathered up and taken into the train yard in the vicinity of the viaduct. They were broken up, and empty cars left in a hold yard immediately north of the Staley plant, or between the Staley plant and the roundhouse of the Wabash. Those empty cars then were inspected

by Staley's men and worked into the Staley plant from the west end as needed by the plant. The loaded cars and empty tank cars were worked on and delivered to the Staley plant on what the Wabash men called Burwell No. 4 through a connection in the extreme east end of the Wabash yard. This was with the exception of grain and soybeans received in road-haul movement over the Wabash. Grain and soybeans were delivered——

Q. That is, moving over the Wabash?

A. Yes.

Q. Yes.

A. The in-bound cars of grain and soybeans were placed on an inspection track immediately north of the elevator, as shown on this blueprint No. 2. After inspection, the inside or plant engine came out and got those cars at the direction of Staley's people, and took them into the plant and placed them as directed
177 by proper authority of the Staley Company.

Q. The movements which you first described are made by one Wabash engine?

A. Yes, sir. Those are the interchange movements, you might say, and the interchange engine picks these cars up off of the various interchange tracks and brings them east to the plant or to this hold yard which I described. There they are classified, the loads from the empties and the empties are left at this point for inspection and movement in from the west end, and the loads are worked to the east end of the track by the break-up engine. I do not think the interchange engine goes east of what I would call the East Decatur yard office.

Q. The interchange tracks from which these cars were taken as stated by you, as first stated by you in your last answer, referred to the interchange yards of the various trunk-line carriers other than the Wabash?

A. Yes, sir.

Q. Now, at the time you made your inspection, how many engines and crews did the Wabash use in this interchange movement with the other trunk-line carriers besides the Wabash?

A. On April 26th there was one crew assigned for definite interchange work. This engine was working from 3 p. m. to 11 p. m. daily. The other pulls not covered by those hours were made by industry engines working at other points in the Wabash terminal.

178 Q. You speak of those as industry engines. What do you mean by that term?

A. Those are engines distinguished from the bum engines in Staley's yard and the make-up and break-up engines in the train yard. Industry engines are engines that do necessary switching at industries of various kinds other than Staley.

Mr. BURCHMORE. They are Wabash engines?

The WITNESS. Wabash engines.

By Mr. THOMAS:

Q. All Wabash engines?

A. All Wabash engines.

Q. The bum engines are the engines which do the spotting within the Staley yard?

A. Yes. There were three of them on that date.

Q. Go ahead.

A. They were working from 7:45 to 3:45; 3:45 to 11:45; and 11:45 to 7:45, rendering continuous stand-by service.

Q. Now, Mr. Rice, what would you say——

Mr. BURCHMORE. Wait a minute now. What is this continuous stand-by service? That is not called for by the question. I think he should be qualified.

Exam. KING. Yes. We ought to know——

Mr. BURCHMORE. We have here a witness, if the Examiner please——

Mr. THOMAS. I will ask him what he means by that.

Mr. BURCHMORE. We have here a witness presented by the
179 tribunal to which we are looking for relief. We think we should have a maximum of fair play from this witness.

Exam. KING. That is right. You are going to get it.

By Mr. THOMAS:

Q. What did you mean by your statement that stand-by service was rendered?

A. These engines at that particular time were working exclusively on Staley work. The only work that they did outside of the plant at all was classification of the loaded cars which they pulled out of the Staley plant and placed in this small hold yard immediately north of the Staley plant, and between the Staley plant and the roundhouse. All other work was inside of the plant, and through personal visits in the vicinity on several different days I saw the engines remaining idle, or "on the spot," in common railroad parlance, in the immediate vicinity of the yard office.

Q. What do you mean by "immediate vicinity"? Really, how close to the yard office were they?

A. Within calling distance from the men working in the office.

Q. Were they on the spot in the Staley plant?

A. Yes.

Q. On the Staley property?

A. On Staley property.

Q. That method—withdraw that. What clerical employees of the Wabash did you observe within the Staley plant, and what did you see them doing?

180 A. There were three yard clerks employed. I, of course, did not see all of them. They worked eight-hour shifts, giving continuous service. They were doing the ordinary work of yard clerks, keeping check of movements of cars, making necessary records and matters of that kind.

Mr. La Forgee. I move to have that answer stricken for the reason that it is inconsistent. If he did not see them, how does he know they were giving continuous service?

The Witness. I did see one man render that particular service.

Mr. La Forgee. You spoke of three.

The Witness. I said three were employed.

Mr. La Forgee. Yes, and you said the three were giving continuous service. Did you mean that?

The Witness. I mean that the records of the railroad company show that three men working eight-hour shifts——

Mr. La Forgee. I am not speaking of records.

Mr. Thomas. Let him finish his answer. You asked the question. Let him finish his answer.

The Witness. The records of the railroad company showed three men working eight-hour shifts, working in the office.

Mr. La Forgee. I renew my motion to have the answer stricken as wholly incompetent upon its face. It could not be true.

Mr. Thomas. That is for the Commission to determine, the truth of the evidence.

181 Mr. La Forgee. It sustains my motion upon the face of it, his voluntary answer.

Mr. Thomas. Your objection goes to the weight of the evidence. If the Examiner please, if there is anything to his objection, it goes to the weight of the evidence rather than its admissibility.

Exam. King. You are going to have an opportunity to cross-examine.

Mr. La Forgee. I see.

Exam. King. I might say, the witness should not testify to anything he does not know of his own knowledge. Proceed, Mr. Thomas.

By Mr. Thomas:

Q. You examined the records that the clerks in this office were making?

A. Yes, sir.

Q. What did you find that those records purported to record?

Mr. La Forgee. I object to it because the records are the best evidence, not the witness' conclusion, or what he saw.

Exam. King. I will sustain the objection.

By Mr. Thomas:

Q. Have you any of the records which were made?

A. I have some copies; yes, sir.

Q. Were these copies made by you or under your direction from the original records?

A. They were made by me personally.

Q. Will you get them, and indicate the records to which
182 you refer?

Mr. La Forgee. I object to it for the reason that the copies are not the best evidence and for the further reason that mere copies prepared by him cannot be used when the originals are in existence and capable of being produced by witnesses who know the authenticity, not of his copies, but of the records.

Mr. Thomas. These records, if the Examiner please, are part of the permanent records of the railroad.

Mr. La Forgee. There is no proof of that.

Mr. Thomas. Just a moment, please. Let me finish my statement.

Mr. La Forgee. Pardon me.

Mr. Thomas. Therefore, they are not available. They would destroy the records which the Commission's rules require the railroads to keep. Therefore, copies made by an authorized agent of the Commission are the best evidence available in the presentation of a matter before the Commission. Therefore, if this witness can attest they are true copies and he made them in his official capacity, I submit they are admissible in evidence.

Mr. La Forgee. I submit there is not any such rule of law. I furthermore submit that the evidence is capable of being produced in this courtroom.

Exam. King. I will shorten this, gentlemen. These copies are evidence such as the Commission ordinarily receives. I am
183 going to let them go in.

The Witness. Among other records I copied was the demurrage record of loaded cars received in the Staley plant for the periods of December, January, February, March, and I believe April—let me see. January, February, March, and April—no; March. I did not get April. This shows the demurrage record of such loaded cars.

Mr. Burchmore. That is the demurrage record of what company?

The WITNESS. All companies. It is a complete demurrage record for all companies.

By Mr. THOMAS:

Q. What do those records show?

Mr. THOMAS. Mr. Examiner, before the witness answers, I would like to say that we will offer them, if we do offer them, only with respect to what they show relative to Staley cars within the Staley yard, or demurrage upon cars to or from the Staley Company.

By Mr. THOMAS:

Q. I will ask you to state in a general way the nature of the information which those demurrage records contain.

Mr. LA FORGEE. They speak for themselves. The Commission will determine that, instead of the witness.

Mr. THOMAS. I submit that even the Commission can be helped and advised by an interpretation of the records, or at least a general statement of the nature of the records, when the interpretation or statement is made by a man familiar with
184 such records.

Exam. KING. Let us see what he has to say about it.

By Mr. THOMAS:

Q. Go ahead, Mr. Rice.

A. The record shows the car number, initial, contents of the car, delivering line—or, at least the road handling the particular car into Decatur, the Wabash delivering all of them——

Exam. KING. Just a moment.

By Exam. KING:

Q. What do they say about it?

A. I beg your pardon?

Q. What do they say about it? Do they say how much demurrage was assessed?

A. Yes; among other things. They show the date, the hour the car arrived, the date and hour placed and the date and hour released, and then further on, the assessment of demurrage or failure to assess, as the record might be.

By Mr. THOMAS:

Q. Placed where, Mr. Rice?

Mr. LA FORGEE. To which we object, if your Honor please.

Mr. BURCHMORE. Is the witness being interrogated on what the record means or what he thinks it means, or is the record going to speak for itself? We are confronted here with a rather remarkable situation. An employee of the tribunal to whom we

are looking for justice is on the witness stand giving his conclusions and interpretation of what certain records mean. Anything we may say may be taken as an attack on the Commission.

We are asked to consent, and it is being offered against
185 our consent, copies of the documents in lieu of the originals, and now we are asked to agree to the witness' interpretation of what these documents mean. Let them speak for themselves.

Mr. THOMAS. Nobody has asked any consent on counsel's part.

Mr. LA FORGEE. It is outside of any issue which has been strictly applied as showing a change in conditions between 1936 and the present time.

Exam. KING. I do not see that these are going to help us very much in deciding on changed conditions. However, I do not think there is much to your statement that these are not original records, Mr. Burchmore.

Mr. BURCHMORE. It makes all the difference in the world.

Exam. KING. They go in, in every case.

Mr. BURCHMORE. I have had objections sustained many, many times against me on that proposition.

Exam. KING. They have not been offered in evidence.

Mr. BURCHMORE. If they were original records we could perhaps tell in whose handwriting they were.

The WITNESS. He is asking for records. I have another record here. I have a second record here.

Mr. BURCHMORE. A copy?

The WITNESS. That is an original record.

Mr. BURCHMORE. No.

Mr. LA FORGEE. What is there in that evidence that leads this gentleman to try to escape the rule they have sought so
186 rigidly to enforce, as to changed conditions?

Mr. THOMAS. We did not object, Mr. Examiner, to any statement as to changed conditions. The Staley Company has endeavored to show what the condition was in 1936——

Mr. BURCHMORE. Oh, no; no. We were not allowed to do that.

Mr. THOMAS. Oh, yes, you were.

Mr. BURCHMORE. We endeavored to show what it was now.

Mr. THOMAS. What it was in 1936 and subsequent to that time.

Mr. BURCHMORE. No.

Mr. THOMAS. I am simply offering evidence as to what the condition is at the present time.

Exam. KING. Within the plant, Mr. Thomas?

Mr. THOMAS. Absolutely. As I have said, if his records include data as to conditions that exist outside of the plant, at some other plant, we do not want that to go in, but since they are embodied in sheets as complete records which include informa-

tion not only at the Staley plant but at other plants, I will expressly state that we do not offer them as proof of anything that took place outside. However, we do want to find out what it says with regard to what happened at the Staley plant.

Exam. KING. Of course, these demurrage records he has obtained do have a bearing on the interchange of cars be-
187 tween the various railroads in Decatur.

Mr. BURCHMORE. Well, let him introduce the record itself over our objection, if, as you have indicated, you are going to receive it, but do not let this witness testify as to what something means when he had no part in making the entry at all. He can conjecture what it means. He can even believe it means a certain thing, when it means something totally different. He might be mistaken. I have been very frequently mistaken, and I think this gentleman will admit that on occasion he has been mistaken.

The WITNESS. Absolutely. I am reading you the headings of the report as I copied them, Mr. Burchmore.

Mr. THOMAS. I merely asked him what the report purports to show.

Mr. BURCHMORE. We object to that.

Exam. KING. The reports speak for themselves. I will sustain the objection.

By Mr. THOMAS:

Q. You have, have you not, some original——

Exam. KING. You can put them in and argue from them, but the reports speak for themselves. Proceed.

By Mr. THOMAS:

Q. You have some original records, have you not?

A. Yes. I have here some original switch lists or yard checks covering January 20th, 21st, and 26th.

Mr. THOMAS. We offer those original yard lists—just a
188 moment. Withdraw that.

By Mr. THOMAS:

Q. I will ask you this: where did you get those?

A. In the yard office, called the Staley yard office, inside of Staley's plant from an employee of the Staley Company.

Q. Purporting to have been made in the due course of business carried on by that employee?

A. May I explain that?

Mr. BURCHMORE. I object to that.

The WITNESS. May I explain as to how I obtained them and what they are?

Mr. THOMAS. Yes.

The WITNESS. I was taken in to this yard office——

By Exam. KING:

Q. Where is this yard office? Mr. Burwell told us, but I have forgotten.

A. It is a short distance west from the coal dock. I could not tell you exactly how far.

Exam. KING. What did you say they called it? What was that name?

Mr. BURWELL. The scale house.

Mr. BURCHMORE. The scale house.

By Exam. KING:

Q. That is the same place?

A. Yes.

Exam. KING. All right.

The WITNESS. I was taken in that place and introduced
189 to various employees. I inquired about the kind of records that were kept and the nature of instructions to the Wabash engine foremen and I was told that all instructions to the engine foremen were in writing, except in unusual cases where only one move was to be made, in which case occasionally verbal orders were issued. I then inquired if any of the original orders or instructions to yard foremen were in existence, and I was told that they were, and I asked to see such orders.

Mr. BURCHMORE. This testimony as to conversation is hearsay. We are objecting to it and asking that all of these conversations be stricken, and that any testimony based on such hearsay be disallowed. I object to its continuing. It does not so far appear that he is giving any testimony that would bind the corporation, A. E. Staley Manufacturing Company, as an admission by that corporation against interest.

Mr. THOMAS. We do not offer it as admissions against interest, but as part of the records kept in due course by the railroad company.

Mr. BURCHMORE. He said he did not get them from the railroad company.

Mr. LA FORGEE. Is the conversation part of the records?

Mr. BURCHMORE. That is conversation about a record he got from the Staley Company, he says.

By Mr. THOMAS:

Q. Let me ask you this: who did you get it from?

190 A. From an employee of A. E. Staley Manufacturing Company. He gave them to me. That is part of the

records. I took also copies of some of the Wabash records of the same nature, but these being Wabash records——

Mr. BURCHMORE. Of the Staley Company?

The WITNESS. I will explain how it happened. They had the original and the duplicate both, of these particular reports, and I asked permission to have the few copies as illustrating the manner in which information was gotten to the engine foremen about work that was to be done.

Exam. KING. We will stop the hearsay.

Mr. THOMAS. We will leave out what was said about it. However, the records are certainly admissible.

Exam. KING. The records are all right.

Mr. BURCHMORE. Well, wait a minute. I do not believe those are records of the Wabash Railway.

Exam. KING. I do not understand it that way.

Mr. BURCHMORE. I do not believe they are.

Exam. KING. We do not understand they are records of the Wabash. They are records he got there at the Staley plant.

Mr. BURCHMORE. From the Staley men.

Exam. KING. From the Staley men.

Mr. LA FORGEE. I quite agree with you, and that does not prove they are a record of the Staley Company.

Exam. KING. I did not say it did.

191 Mr. LA FORGEE. There is not a shadow of a line of authority in the land to sustain that; not a bit.

Mr. BURCHMORE. Let us let the steamroller work here a little. Go ahead, government counsel. As for any thing we object to, it looks like we are criticizing the Commission and its staff.

Mr. THOMAS. Nobody has intimated as much.

Exam. KING. Proceed, gentlemen.

Mr. THOMAS. We offer those in evidence.

Mr. BURCHMORE. What are you offering?

By Mr. THOMAS:

Q. How many are there; six?

A. They have already been given numbers 9 to 13 inclusive.

Mr. THOMAS. If the Examiner please, I offer exhibits 9 to 13, both inclusive, in evidence.

Mr. BURCHMORE. We object to these on the ground there is nothing whatever to show they are records either of the Wabash Railway Company or the Staley Manufacturing Company, except the hearsay testimony of this witness. What right he has to possession of the original records of the Wabash Railway and Staley Company, we would like to know.

Mr. THOMAS. He has explained fully how he got them, Mr. Examiner. He has explained where they came from. He has

seen the duplicates which have remained in the Staley plant, given him by a Staley employee, so the Staley Company cannot question the admissibility of the records which their employee
192 turned over to this witness. He did not take them forcibly. They were given to him freely.

Exam. KING. Just a moment.

By Exam. KING:

Q. They were given to you by somebody there in the Staley plant that you understood to be in charge of that work, and had made those records?

A. The man in the yard office.

Mr. LA FORGEE. If your Honor please, I submit that he may have just as well brought a newspaper in containing the price of grain, because somebody gave it to him in the Staley Company's office. I do not know of any rule of evidence authorizing those to be admitted in evidence.

Mr. BURCHMORE. The weighmaster may have given him some telephone numbers, but what did that prove?

Exam. KING. Are you still offering these, Mr. Thomas?

Mr. THOMAS. Yes.

Mr. BURCHMORE. I ask that ruling be deferred until after cross-examination.

Exam. KING. Sir?

Mr. BURCHMORE. I am going to ask that you defer your ruling until after cross-examination.

Exam. KING. All right. I will ask you this:

By Exam. KING:

Q. These were obtained in the usual, ordinary course of business of your work for the Interstate Commerce Commission?

193 A. Sure.

Mr. BURCHMORE. That was in a special investigation in which he was sent out under instructions to discover facts, and not as part of any routine conduct of business.

Exam. KING. That is part of his work.

Mr. BURCHMORE. It is part of Mr. Thomas' purpose to show everybody up who does not allow anything he discovers to go in.

Exam. KING. We are taking too much time on this. We are doing too much talking and not getting anywhere. Proceed.

By Mr. THOMAS:

Q. What other records or copies of records have you?

A. I have various and sundry copies of west-bound checks, yard checks for different dates, showing numbers and initials and contents of cars on the interchange track at certain times. These are Wabash records made by Wabash yard clerks. In some instances

they show the disposition of the cars in question and in others they simply show as on hand, without any instructions having been received.

Q. Did you in the course of your investigation observe the manner in which traffic was handled at Burwell yard and the interchange track connecting therewith?

Mr. BURCHMORE. I beg your pardon. I did not hear that question. Read it please, Mr. Reporter.

(Question read.)

A. Do you mean, Mr. Thomas, the manner in which the
194 Wabash got loaded and empty cars into Burwell track No. 4?

Mr. THOMAS. Yes.

The WITNESS. Yes, I did. I was on hand personally and saw them bring up a cut of cars. Whether or not it was an inbound train or a transfer cut, I could not say.

By Exam. KING:

Q. Where is this Burwell track No. 4?

A. That is the north track in the Burwell yard; what would be the sixth track in those recently acquired by the Wabash; the northernmost track. The engine was classifying a cut of cars in the extreme east end, and they kicked in at different times several boxcars under load, a car or two of coal, and several empty tank cars, while I watched the operation.

Q. Had those tracks been taken over by the Wabash at that time?

Mr. BURCHMORE. Yes.

Mr. LA FORGEE. The evidence discloses that they began negotiating for it and operating it, as I recall, about December 17th or December 20th—pardon me; December 10th, 1937.

Exam. KING. Proceed.

By Mr. THOMAS:

Q. Have you ever previously made an investigation as to the manner in which traffic was handled at the Staley plant?

A. Not particularly the manner of handling traffic. I was concerned in an investigation with reference to the application of A. E. Staley Manufacturing Company to incorporate its properties as the Lake Decatur & Eastern Railroad.

195 Q. That was at what time?

A. I think it was 1931. I will not be sure as to the date. Possibly 1931 or 1932.

Q. Are you able to state what changes if any in the track layout and the manner of handling traffic had taken place at the time you made your last inspection, from the conditions which existed in 1936?

Mr. BURCHMORE. Just a moment. He has not testified he made any examination of the conditions in 1936, if I am not mistaken.

By Mr. THOMAS:

Q. What new work, if any, did you see under way, that is, in the way of track construction at the Staley plant, when you made your inspection?

A. In the extreme east end of the yard they were preparing to change the connecting track from a connection with what the Wabash people called Burwell No. 4, to a connection a short distance further east, probably 100 feet—maybe more—which would be with the main line of the Staley tracks that led around to Shellabarger, the object evidently being to give them access to the entire yard, instead of to track No. 4 only.

Mr. BURCHMORE. If the Examiner please, I move that that latter part be excluded.

Exam. KING. Sustained.

Mr. BURCHMORE. It is not responsive to the question. It is a purely voluntary statement by this witness and a conclusion
196 of his. It is not in response to anything that was asked him.

Exam. KING. I will sustain the objection.

Mr. THOMAS. That is all.

Exam. KING. Cross-examine.

Cross-examination by Mr. BURCHMORE:

Q. Mr. Rice, you say you made an examination of this property by direction of the Commission.

A. Yes.

Q. From whom did you receive the direction to do so?

A. Mr. Boltwood.

Q. Who?

A. Mr. Boltwood, Harvey Boltwood, chief of the Bureau of Service.

Q. Were those directions in writing?

A. Yes.

Q. Did you make a written report?

A. I did.

Mr. BURCHMORE. We will ask the Examiner to give us access to the direction and report, and we will ask the Examiner to rule whether we are entitled thereto.

Mr. THOMAS. If the Examiner please, it is an interoffice memorandum, which has been held not to be subject to——

Mr. BURCHMORE. I do not care to discuss it. I would like to have a ruling one way or the other.

Mr. La Forgee. If your Honor please, it is a public document.

197 Exam. King. I will overrule you.

Mr. Burchmore. You are denying our request?

Exam. King. Yes.

Mr. La Forgee. It is a public document.

Exam. King. I do not think so. However, I have passed on it.

By Mr. Burchmore:

Q. You say you made a previous investigation in connection with the Lake Decatur & Eastern Railroad, so-called, back in 1931?

A. About that time; I do not remember the exact date.

Q. Was that prior to the construction of certain tracks by the Illinois Central and others?

A. No, sir.

Q. Into this plant?

A. No. That track was in existence at that time.

Q. Did you report to the Commission at that time that this joint track was built for a distance of two miles to reach the Staley plant?

A. I do not remember at this time what my report was. I reported on what the facts were at that time.

Q. You do not know whether you so reported that to them; that the line was built all the way over from the——

A. I described the track, yes; as to what particular distance it was, I could not say.

Q. As a matter of fact, you have learned since that there

198 was only two or three hundred feet of track built to the Staley plant before the Illinois Central and Illinois Traction and Pennsylvania; is that not a fact?

A. I am not aware of the particular ownership there, Mr. Burchmore. I reported on the entire connection.

Mr. Burchmore. Let me see these original records which have been offered in evidence; the small card forms.

The Witness. Here they are.

By Mr. Burchmore:

Q. Are those all of the cards that were handed to you by the man who gave them to you?

A. No.

Q. You selected those out from a group?

A. These happened to be ones where there were originals and duplicates both.

Q. What was the name of the man who handed you these four cards, if you know, which are numbered 9, 10, 11, and 12—oh; there are five of them—9, 10, 11, 12, and 13.

A. I think his name was Ellis. I will not be sure.
Q. You are not sure of his name?
A. No. I think it was Ellis.
Q. How did you know he was at that time an employee of the Staley Company?
A. He was introduced to me as such.
Q. By whom?
A. Mr. Gogarty, I believe; I am not sure. I think Mr.
199 Gogarty was the man.
Q. When did he give you these cards?
A. During the time I was in the office, probably.
Q. In the month of April 1938?
A. Probably the 25th or 26th of April.
Q. You asked him for them?
A. Well, I asked his permission to take them.
Q. Are these the latest cards he gave you?
A. These are the only ones he gave me.
Q. I thought you said there were some others he gave you.
A. Of these there are copies or duplicates. Those others were the only originals.
Q. Do you know in whose handwriting those cards are?
A. The handwriting on the original is in the handwriting of the yard clerk of the Wabash, as I understand it. That is, I could not tell you whose handwriting it is.
Q. These four cards I have in my hand have numerous pencil notations on them, have they not?
A. Yes, sir.
Q. In whose handwriting are they? Do you know in whose handwriting they are?
A. I do not.
Q. Do you know where these cards were just before you got them?
A. Yes. They were tied up in a package of similar records.
Q. Where?
200 A. In the yard office; inside of Staley's plant.
Mr. THOMAS. Speak up a little louder, please.
The WITNESS. All right.

By Mr. BURCHMORE:

Q. Were they in the desk of this Staley clerk, or in the desk of the Wabash clerk?
A. No. As I recall it, they had been in a pigeonhole rack.
Q. On the wall?
A. On the wall, I think; that is right.
Q. Over the desk of the Staley man?
A. I cannot tell you whether they came from over the desk of the Staley man or the Wabash man.

Q. Do you know whether at that time the Staley Company had a yardmaster?

A. I was introduced to Mr. Ellis as yardmaster. Whether that was his actual title or not, I could not say.

Q. Do you know what use was made of these four cards at the time they were made out, that is, on January 20th, 21st, and 26th—I mean, these five cards—1938?

A. It was my understanding that the cars were switched in accordance with the instructions on these particular cards.

Q. Is it your understanding that those cards as such went to the switchman of the Wabash?

A. That was my understanding; yes.

Q. Do these cards look like a switchman had had them?

A. The top one does.

201 Q. The others do not, do they?

A. They are not so bad. That man's hands were cleaner, but the one on top looks like a switchman might have had it.

Q. You have been handling them yourself, have you not?

A. Oh, yes; and you have them in your own hands. That might kind of gum them up. Also, our old friend over there might have had them.

Q. You mean Mr. Thomas?

A. No; this gentleman over here [indicating]. I do not know whether his hands were any cleaner than ours.

Exam. KING. Let us proceed, gentlemen. Have you any further questions, Mr. Burchmore?

Mr. BURCHMORE. Oh, yes.

By Mr. BURCHMORE:

Q. In the month of April and since the month of April, do you know what if any instructions have gone from Staley to the Wabash Railway, and how those instructions have been conveyed with regard to cars in the plant?

A. No, sir; I do not.

Q. So if the method has changed since the month of January 1938, and is different today from what it was in January 1938, and on January 26th, 1938, you could not describe the method today?

A. I could only give you hearsay, which you object to. I was told the manner in which the instructions were handled, that it was the same as you have there in your hand.

202 Q. Who told you that?

A. I was given that information in the office. Mr. Ellis was the man who told me that.

Q. In April?

A. With reference to the written instructions that were given me; that is an illustration of the manner in which the written instructions were put out.

Q. Has anybody told you in any conversation as to what the method was in May and June of 1938?

A. Yes. Mr. Gogarty told me conditions had been entirely changed since I was there.

Q. You did not mention that before, did you?

A. No. You did not ask the question.

Q. Mr. Thomas did not ask you that, did he?

A. No. Nobody asked me that.

Q. You heard the testimony of Mr. Burwell, did you not, Mr. Rice?

A. Yes.

Q. You heard superintendent Haney's testimony?

A. Yes.

Q. Do you contradict anything they said as to the manner of forwarding instructions, orders, and so forth?

A. I do not know what conditions——

Mr. THOMAS. Just a moment. We object to that. That is not the proper way to do that.

Mr. BURCHMORE. It is.

203 Mr. THOMAS. No; it is not.

By Mr. BURCHMORE:

Q. Have you any testimony to give at variance with theirs, as to the conveyance of instructions and the jurisdiction of officers over these switch crews and so forth, at the present time?

A. I do not know what the conditions are at the present time, Mr. Burchmore.

Q. You have been told they were changed?

A. I was told by Mr. Gogarty they had changed. What changes had been made, I could not tell you. It would be hearsay on my part.

Q. Did you recommend any changes?

By Mr. THOMAS:

Q. Mr. Gogarty did not tell you what the changes were, did he?

Mr. BURCHMORE. Just a moment.

By Mr. BURCHMORE:

Q. Did you yourself recommend to the Staley officers any changes?

A. No, sir. Absolutely not.

Q. Did you tell the Staley men you thought this plant was being efficiently, economically, and admirably served as a matter of switching practice?

A. I do not think I did; no, sir.

Q. Did you not offer some specific suggestions and say that you would be back in about six weeks, and if they were carried out your report would be favorable?

204 A. Absolutely, I did not.

Q. Did you not say that in substance?

A. No; not in substance.

Q. You said you saw with your own eyes some engines remaining idle.

A. Yes.

Q. Do you know what the engineer and fireman were doing while they remained idle?

A. No.

Q. Were they shaking dice or something?

A. I do not know.

Q. Seriously, why were they remaining idle?

A. How would I know? The engines were standing there, not moving.

Q. For how long?

A. Ten or fifteen minutes, I should say. I did not time them. I had no interest in it other than the fact that they were merely standing there.

Q. Were they standing idle because of any desires, ambitions, fears, or wishes of the Staley Company?

A. I do not have any information on that at all.

Mr. THOMAS. Speak louder, please.

The WITNESS. Yes.

By Mr. BURCHMORE:

Q. You do know that Wabash Railway engines, Pennsyl-

205 vania Railroad engines, and all railroad engines do at times remain idle?

A. Absolutely.

Q. In railroad yards?

A. Yes, sir.

Q. And attached to railroad trains?

A. Yes, sir.

Q. What was your idea in mentioning the idleness of those engines?

Mr. THOMAS. We object to that.

By Mr. BURCHMORE:

Q. What did you intend to convey by that? Tell us what it means?

Mr. THOMAS. I object to the question.

Mr. BURCHMORE. He said he saw some engines idle. There is an inference to that.

Exam. KING. That is all right. Go ahead and ask him.

By Mr. BURCHMORE:

Do you mean they are loafing bums, is that it?

A. No. I mentioned that when the engine was idle, when they had run out of work, presumably, inside of the Staley plant, it was not sent out of the Staley plant into the Wabash yard to be occupied doing strictly Wabash yard work at any other point.

Q. Is it not a fact that when they run out of work in the Wabash yards, they are sometimes not sent somewhere else where they could be doing something?

A. Yes. That is true.

206 Q. You said on April 26th there were certain engines doing switching in the Staley plant and to the Staley plant. Did these engines which you referred to handle no cars consigned to or from the Shellabarger plant, for instance? You are sure they handled no Shellabarger shipments?

A. May I outline the total engines in service——

Q. Just a moment, please. Just answer my question. Are you sure those engines did not handle any Shellabarger cars?

A. The engines inside of Staley's plant do not handle cars for anybody except for Staley, according to Mr. Curran, general yardmaster.

Q. According to your own observation, and what you saw; that is what I am talking about.

A. From what I saw they did not handle any cars to Shellabarger. In fact, I was up at Shellabarger's most of that particular day, I think, and there was not a car in the yard.

Q. There were none near Shellabarger that day?

A. I do not know about what happened later, but there was none when I happended to be out there.

Q. At the plant or the yard?

A. At the Shellabarger plant.

Q. Do you know what engines do serve Shellabarger?

A. No.

Q. You do not know?

A. No.

207 Q. Do you know what engines serve the other industries on the Wabash at Decatur?

A. I know they have their engines that serve other industries including Shellabarger's yards; they have engines that are classed as industrial engines.

Q. They go there any time to switch the industries that they serve?

A. I could not tell you about that, either. Mr. Haney could give you better information about that than I can.

Q. These engines you call industry engines, are they engines which devote all or practically all of their time to working cars to and from different industries?

A. According to the list furnished me by the general yardmaster, of the Wabash, there are four engines in service, or there were four engines in service on April 26th, which he classed as industrial and interchange engines.

Q. What industries did they serve? Have you any idea?

A. I could not tell you about that.

Exam. KING. Mr. Rice, is this correct—this is my understanding of your testimony——

By Exam. KING:

Q. They have some engines whose principal work at least is the serving of industries in Decatur?

A. Yes.

Q. You call those industrial engines?

208 A. Yes; Mr. Curran calls them industrial and interchange engines, because except for this period between 3 and 10, or whatever it is, 3 and 11, the industrial engines do the interchange work; at hours other than between 3 and 11 in the afternoon. So, their work is not the same always. They vary.

Q. Do you know how the number of cars they handled on that day compared with the total number of cars handled by the engines serving the Staley plant?

A. No, sir.

Q. You do not know whether the engines serving the Staley plant moved more cars per hour or per day?

A. No.

Q. Then the others.

A. No, sir.

Q. Now, in your investigation and 16 years' work with the Bureau of Service, and all of your activity—by the way, you have been on duty continuously since April?

A. Yes, sir.

Q. Have you encountered any other industry on the Wabash, Pennsylvania, the Baltimore & Ohio, the Illinois Central, or Illinois Terminal at which a charge is made for spotting cars?

Mr. THOMAS. That is objected to as outside of the scope of the Commission's order.

Mr. BURCHMORE. If he says "No," it proves he has not any experience at all in affairs of rail transportation. I am testing his competency.

209 Exam. KING. Go ahead and answer.

The WITNESS. In that particular time, no.

By Mr. BURCHMORE:

Q. In the last 16 years?

A. Oh, yes; in the last 16 years.

Q. I asked you about during the 16 years.

A. Do you want me to give you a list?

Q. Yes.

A. The Sheffield Steel Plant at Kansas City.

Q. Yes; any others?

A. The Byproducts Coke Company in Chicago.

Q. The Chicago Byproducts Coke Company?

A. Yes.

Q. Do they not get an allowance of $2 per car?

A. Wasn't that what you asked?

Q. No. I said, where they were made to pay in addition to the freight rate.

A. I do not know anything about that.

Q. You never heard of that?

A. No.

Q. In addition to the freight rate for the spotting service? I can give you one, down on the Florida east coast. It went out of business the next year.

A. I do not know about that.

Mr. BURCHMORE. That is all.

Mr. THOMAS. That is all.

210 Exam. KING. Are there any further questions of this witness?

(No response.)

Exam. KING. You may be excused, Mr. Rice.

Mr. THOMAS. Have these exhibits been admitted in evidence?

Exam. KING. We have not received them yet.

Mr. THOMAS. I ask that the exhibits be admitted in evidence.

Exam. KING. We will accept them for what they might be worth. They may be received.

(Exhibits Nos. 9 to 13, both inclusive, received in evidence.)

Exam. KING. Call your next witness, Mr. Thomas.

Mr. THOMAS. That is all.

Exam. KING. Is there anything further to be presented in the way of testimony?

Mr. POWELL. I would like to take about ten minutes, Mr. Examiner, if I may. I have a brief statement to put in and two exhibits as to changed conditions on the Illinois Terminal.

Exam. KING. Very well.

Mr. LA FORGEE. If Your Honor please, as a matter of accommodation to this gentleman, I might say I represent those people downstate and I will ask a few preliminary questions in order that the record may be in order.

Exam. KING. Very well. Be sworn, Mr. Powell.

H. G. POWELL was sworn and testified as follows:

211 DIRECT EXAMINATION

By Mr. LA FORGEE:

Q. State your name.

A. H. G. Powell.

Q. Where is your residence?

A. St. Louis, Missouri.

Q. What is your business or occupation?

A. Vice president of traffic, Illinois Terminal Railroad Company.

Q. That is an Illinois corporation?

A. I believe so; yes, sir.

Q. What business is it engaged in?

A. Transportation.

Q. Is it a railroad engaged in interstate commerce?

A. Yes, sir.

Q. You have indicated that you would like to make some sort of statement in relation to this proceeding.

A. Yes, sir.

Q. Will you be good enough to state to the Examiner what it is?

A. I would like to present an exhibit here.

Mr. THOMAS. Mr. Examiner, we wish, if we are to hear a narrative statement, to reserve the right to strike out any portion thereof which may go outside of the issues here. We cannot anticipate it because we have not heard it.

Exam. KING. Very well.

The WITNESS. I have two exhibits which I would like to

212 present.

Exam. KING. They will be exhibits 15 and 16.

(Exhibits 15 and 16 marked for identification.)

By Mr. LA FORGEE:

Q. Proceed with your statement, Mr. Powell.

A. Exhibit No. 15 for identification shows the joint track arrangements of the Pennsylvania Railroad, the Illinois Central

Railroad, and the Illinois Terminal Railroad, whereby they reach and serve the plants of the Shellabarger Grain Products Company and the A. E. Staley Manufacturing Company.

Mr. THOMAS. We object, of course, to the reference to service to the Shellabarger Grain Products Company.

The WITNESS. I have to say that to show how we reach the Staley Manufacturing Company, as we must first pass the Shellabarger plant.

Exam. KING. Go ahead.

The WITNESS. Circle reference 1 is the Illinois Central Railroad and Pennsylvania Railroad joint yard. Circle reference 2 is the Illinois Central Railroad and Illinois Terminal Railroad interchange yard. Circle reference 3, down at the lower right-hand corner, is the A. E. Staley Manufacturing Company yards. There was completed on July 31, 1929, the track into and serving the plant of the Shellabarger Grain Products Company. This was under a joint arrangement of the Illinois Central Railroad, the Pennsylvania Railroad, and the Illinois Terminal Rail-
213 road. Effective April 18, 1930, there was constructed a joint track as shown on the blueprint from the extension of the Shellabarger Grain Products Company tracks to a connection with the yards of the Staley Manufacturing Company, this being owned jointly by the Illinois Terminal Railroad, the Illinois Central Railroad, and the Pennsylvania Railroad. The length of that track is about 900 feet. Under the joint arrangement of this track the Illinois Terminal Railroad place and take from the Shellabarger Grain Products Company all of the Illinois Terminal Railroad business, and the Illinois Central Railroad serves jointly the Shellabarger Grain Products plant over the Illinois Terminal Railroad tracks from B to E for the Illinois Central Railroad and the Pennsylvania Railroad account.

By Exam. KING:

Q. Where is that letter B now?

A. It is right up here [indicating].

Exam. KING. I see. Go ahead. There are some different letters in here and it is hard to follow it.

The WITNESS. There was handled for the year June 1, 1937, to May 31, 1938, over the joint Illinois Central Railroad, Pennsylvania Railroad, and the Illinois Terminal Railroad tracks at Decatur for the Shellabarger Grain Products Company, a total of 346 cars in-bound, and 584 cars out-bound, or a grand total of 930 cars. The three lines, namely the Illinois Central Railroad, the Illinois Terminal Railroad, and the Pennsylvania Railroad, have the joint use of the tracks E to F, which lead into the Staley

Manufacturing Company, and the Illinois Central
214 Railroad engines under contract perform the services in and out of the Staley Manufacturing Company for all three lines, the cost of such operation being prorated on basis of number of cars handled for each company.

Mr. BURCHMORE. Just a moment.

By Mr. BURCHMORE:

Q. I think you said, "they perform." Did you mean that to be past tense?

A. Yes.

Q. That was past tense, then?

A. Yes.

Mr. LA FORGEE. Have you had your blueprint identified?

Exam. KING. Yes. That is exhibit 15.

Mr. LA FORGEE. Very well.

Exam. KING. Go ahead, Mr. Powell.

The WITNESS. Exhibit No. 16 shows the traffic handled from January 1, 1937, to December 10, 1937, for the Illinois Terminal Railroad by the joint engines, or coordinated engines from and to the Staley Manufacturing Company, showing a total of 5,715 cars handled at an expense of $5,128.94, or an average cost per car of $0.8974. On and prior to May 22, 1936, delivery and receipt of cars to and from the Staley Manufacturing Company was made for the Illinois Terminal Railroad, the Pennsylvania Railroad, and the Illinois Central Railroad by the Illinois Central Railroad under joint contract via the Belt Line leading from the
215 Illinois Terminal Railroad main line east of Decatur at Brush College Road to Staley Company tracks known as Burwell yards, and the switching from Burwell yards to and from Staley Company loading and unloading tracks was performed by Staley Company engines, and a terminal allowance of not to exceed $1.83 per car made by tariff for this intraplant switching by the Illinois Terminal Company.—Under the order of the Interstate Commerce Commission we cancelled our tariff No. 2115 by supplement 1, effective July 8, 1936, discontinuing the allowance. Effective June 25, 1936, the Staley Company discontinued their switching service, and a joint contract was made with the Wabash Railway by the Illinois Terminal Railroad, the Illinois Central Railroad, the Baltimore & Ohio Railroad, and the Pennsylvania Railroad providing that the Wabash would supply the necessary switching and engine crews to perform delivery and receipt of cars to and from the Staley plant, and the total expense thereof divided between each road in proportion to the number of loaded cars handled for the account of each road. Effective November

15, 1937, Agent Sperry's Tariff No. 79 provided an intraplant switching charge of $2.27 per car to be assessed and collected from the Staley Company by each road haul carrier on all cars handled by them. This tariff was suspended on state traffic by the Illinois Commerce Commission. On December 10, 1937, the Staley Company served notice on the Illinois Terminal Railroad, Baltimore & Ohio Railroad, Illinois Central Railroad, and the Pennsylvania Railroad to discontinue their method of delivering
216 their cars and arrange to deliver all cars to their designated interchange tracks with the Wabash Railway beyond the confines of the property of the Staley Company, as the Wabash had been chosen as the only road to serve their plant. This request was complied with and the joint switching contract with the Wabash was cancelled. All deliveries and receipt of cars are now handled in this manner under reciprocal switching arrangements at a cost of 13 cents per ton, minimum $2.70, maximum $4.95 per car, until March 28, 1938, after which Ex Parte 123 increased this charge to 14 cents per ton, minimum $2.97, maximum $5.45 per car. The responsibility of collecting the charge of $2.27 per car, which under ExParte 123 effective March 28, 1938, was increased to $2.50 per car now rests with the Wabash, who are performing the intraplant switching. That is all I have.

Mr. BURCHMORE. May I ask one question?

Exam. KING. Yes.

By Mr. BURCHMORE:

Q. Mr. Powell, is it not a fact that previous to the construction of this track which passed—the track which extended on from the Shellabarger plant into the east entrance of the Staley Company, that is to reach the Staley Company, the track extended only a few hundred feet beyond the Shellabarger plant?

A. That is correct. I do not know the exact distance. I think from the Shellabarger plant to the F shown on the blueprint is about 900 feet, according to the scale of the map.

217 Q. Before that track was constructed beyond the Shellabarger plant to the Staley Company at the east, the Illinois Terminal Railroad traffic coming into Decatur consigned to the Staley Company was handled via the Wabash, was it not?

A. Yes, sir.

Q. Was it handled under a reciprocal tariff?

A. A reciprocal switching tariff.

Q. That reciprocal switching tariff is the same reciprocal switching tariff that is in effect today?

A. I believe it is the same series, anyway.

Q. There has been no change in the language or terms of the reciprocal switching tariff. Now, at that time, previous to 1930, the Illinois Terminal bringing cars into Decatur and turning them over to the Wabash, which delivered them to the Staley plant, charged the Decatur freight rate, did it not?

A. Yes, sir.

Q. That freight rate with the reciprocal switching charge included delivery in the Staley plant?

A. Yes, sir.

Mr. BURCHMORE. That is all.

Mr. THOMAS. We object to the last statement there as to what their rate included.

By Mr. BURCHMORE:

Q. You did not collect anything in addition, did you?

A. No, sir.

218 Mr. THOMAS. I object to his statement and conclusion as to the construction of the tariff.

By Mr. BURCHMORE:

Q. Suppose it were a car consigned to the Mississippi Valley Structural Steel Company. There was not any extra added either?

A. No, sir.

Q. That was handled in the same way?

A. That was handled in the same way.

Mr. THOMAS. Ask him whether they paid or not; they did not pay anything.

The WITNESS. They did not.

Mr. BURCHMORE. What is the difference?

Mr. THOMAS. There is a big difference.

The WITNESS. May I correct one statement there? You asked me if there had been any change in the wording of that switching tariff. I believe that effective the same date, as I remember it now, effective the same date as Sperry's tariff putting in a charge of $2.25 took effect, the other roads changed their tariff, including the Wabash, to the effect that the charge included delivery only to the interchange track.

By Mr. BURCHMORE:

Q. Of the Staley Company?

A. Yes.

Q. They made no change to the Mississippi Valley Structural Steel Company?

A. No.

219 Mr. THOMAS. I move that those tariffs be made part of the record by reference, and that we have copies of them.

In other words, we should be permitted to go to the tariffs themselves.

Exam. KING. Is there any objection to it?

Mr. BURCHMORE. There is no objection to it if it is understood that any tariff may be referred to by reference, by counsel. However, if it is meant by that, that every tariff on file with the Interstate Commerce Commission is to become a part of this record——

Mr. THOMAS. Of course not; I did not mean that.

Exam KING. Then it will be understood that the tariffs which have been referred to here today by number and by description in the record will be considered part of the record by reference. Is that satisfactory?

Mr. BURCHMORE. Yes.

Mr. THOMAS. Yes.

Exam. KING. Very well.

Mr. LA FORGEE. I assume the witness, on behalf of his company that he represents, desires his exhibits to be introduced in evidence.

The WITNESS. Yes. I would like to have them received.

Mr. THOMAS. I have no objection.

Exam. KING. They will be received as exhibits 15 and 16.

(Exhibits Nos. 15 and 16, Witness Powell, received in
220 evidence.)

Exam. KING. Are there any further questions of Mr. Powell?

Exam. KING. Are there any further questions of Mr. Powell?

Mr. THOMAS. I have no questions.

By Exam. KING:

Q. What is your purpose in making this explanation, Mr. Powell? I just do not understand it.

A. I heard the statement made in Washington by an authority of a department of the Interstate Commerce Commission to the effect that this joint track of the Illinois Terminal, the Pennsylvania, and the Illinois Central was built exclusively and entirely for the service to Staley Manufacturing Company, and that the service over that track to the delivery tracks within the Staley plant was a joint arrangement, and sometimes by a joint engine in the plant. It is to correct that impression and to get the record straight that I wanted to introduce this blueprint showing the actual construction of the track and what it consisted of.

Q. Is your company hurt by the present arrangement?

A. Very seriously. The business we handle into the Staley plant consists largely of coal originating on our line and grain, all of which loads heavy, and the maximum applies in probably 90 per cent of the cases.

Q. That amounts to how much in dollars?

A. $5.45 a car versus the old arrangement we had of eighty-nine and seventy-four cents on this joint coordinated engine plus the $1.83 we had to pay the Staley Company for the work
221 inside of the plant.

Q. The maximum in the other cases would be about $2.72?

A. Just about.

Q. Now it cost you about $5?

A. Pretty nearly double, and this is business that originates on our own road, that we certainly ought to get some revenue out of.

Q. Whose benefit is this for, the Wabash?

A. Well, I do not know whether the Wabash is making any money out of it at this charge or not. Of course, they are performing the service. We had an arrangement whereby we got into this plant in an economical manner, which we have not got now.

Q. You do not get into the plant at all now?

A. The tracks which we have access to have been spiked, as testified to by Mr. Burwell.

By Mr. THOMAS:

Q. Spiked by the Staley Company?

A. Yes, sir.

Mr. BURCHMORE. I think we would have authority to do that.

By Exam. KING:

Q. Are you getting the same proportion of traffic at the Staley Company that you formerly did?

A. I think so. They still buy grain on our line and buy coal on our line. Of course, there is not as much coal probably coming in now as under normal conditions.

By Mr. BURCHMORE:

Q. Coal is all intrastate?

A. Coal is intrastate.

222 Q. Grain is intrastate?

A. Until it takes transit and goes out-bound; then it becomes interstate.

Mr. BURCHMORE. That is all.

Exam. KING. That is all. Are there any further questions of this witness?

(No response.)

Exam. KING. You may be excused, Mr. Powell. Thank you.

The WITNESS. Thank you.

(Witness excused.)

Exam. KING. Is there anything else?

Mr. BURCHMORE. With reference to this contract we are to furnish, it occurs to me there is a very large number of appearances of record. Many of these parties presenting appearances have not been asking for exhibits. I would like to have it understood that we will furnish copies of the contract only to Mr. Thomas and to such others as request them. I will furnish it to the five railroads who are here. If anyone else requests it, we will furnish it to them. I ask to be relieved of the task of furnishing it to anyone else.

Exam. KING. Very well.

Mr. THOMAS. Mr. Examiner, I do not know whether he intended to furnish certified copies. We would not insist on that. Just send us copies.

Mr. BURCHMORE. We will certify as counsel that they are
223 true copies.

Mr. THOMAS. That is what I mean.

Mr. BURCHMORE. Yes.

Mr. THOMAS. You do not need to have the copies certified.

Mr. BURCHMORE. No.

Exam. KING. If anyone else wants copies, you can furnish them also. Is there anything else, gentlemen?

(No response.)

Exam. KING. I think we will have a proposed report in this case.

Mr. LA FORGEE. I did not quite understand that.

Mr. BURCHMORE. The Examiner says we will have a proposed report in this case.

Exam. KING. What about briefs?

Mr. BURCHMORE. Will they be helpful?

Exam. KING. I think so.

Mr. BURCHMORE. Very well. We will ask you to fix a reasonable interval that will not delay the case, which will not put counsel to too great an effort, however.

Exam. KING. Will the 1st of August be satisfactory?

Mr. THOMAS. How long?

Exam. KING. The 1st of August.

Mr. BURCHMORE. That will be all right with us.

Mr. THOMAS. Then I would like a week or ten days after that to reply.

224 Mr. BURCHMORE. Not in a proposed report case; that is not done.

Exam. KING. No. They should be filed concurrently.

Mr. THOMAS. Simultaneously?

Exam. KING. Yes.

Mr. THOMAS. Very well.

Exam. KING. We will set the brief date as August 1st. I could set it ten days beyond that, if that will suit your convenience better, Mr. Thomas.

Mr. THOMAS. No. That will be satisfactory.

Exam. KING. Briefs will be due on the 1st of August. Is there anything further, gentlemen?

(No response.)

Exam. KING. The hearing is closed.

(At 4:45 P. M., Central Standard Time, June 27, 1938, hearing closed.)

225 *Plaintiffs' Exhibit No. 3*

Before the Interstate Commerce Commission

Ex Parte No. 104, Part II

TERMINAL SERVICES—A. E. STALEY MANUFACTURING COMPANY TERMINAL ALLOWANCE.

I. & S. Docket No. 4736.

SWITCHING CHARGES AT DECATUR, ILLINOIS.

ORLANDO HOTEL,
Decatur, Illinois, Tuesday, April 23, 1940.

Met, pursuant to notice at 10 o'clock A. M.

Before W. J. PATTERSON, Commissioner; F. M. WEAVER, Examiner.

Appearances

John S. Burchmore, 2106 Field Building, Chicago, Illinois, and C. C. Le Forgee, Citizens Bank Building, Decatur, Illinois, and J. C. Burwell, Vice President and Traffic Manager, A. E. Staley, Manufacturing Company, Decatur, Illinois, appearing for the A. E. Staley Manufacturing Company.

Elmer A. Smith, 135 East 11th Place, Chicago, Illinois, appearing for the Illinois Central Railroad Company.

226–227 Frank J. Goebel, 1315 Union Central Bldg., Cincinnati, Ohio, appearing for the Baltimore & Ohio Railroad Company.

Guernsey Orcutt, Broad Street Station Bldg., Philadelphia, Pennsylvania, and George F. Dyche, Union Station, Chicago, Illinois, appearing for The Pennsylvania Railroad Company.

R. F. Butler, 710–12 N. 12th Boulevard, St. Louis, Missouri, and H. G. Powell, St. Louis, Missouri, appearing for the Illinois Terminal Railroad Company.

Edward F. Ledwidge, Granite City, Illinois, appearing for the Granite City Steel Company.

James J. Hoben, 1214 No. 2nd Street, East St. Louis, Illinois, Traffic Manager, appearing for Hunter Packing Company.

Kenneth A. Moore, 320 New Center Building, Detroit, Michigan, appearing for Automobile Manufacturers Association.

G. V. Lovering, Interstate Commerce Commission, Washington, D. C., appearing for the Interstate Commerce Commission.

N. S. Brown and L. H. Strasser, Railway Exchange Building, St. Louis, Missouri, appearing for the Receivers of Wabash Railway Company.

W. N. Webb, 919 North Michigan Avenue, Chicago, Illinois, appearing for The Celotex Corporation.

228 *Proceedings*

Com. PATTERSON. Gentlemen, the Commission has assigned for further hearing at this time and place Ex Parte No. 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services, A. E. Staley Manufacturing Company Terminal Allowance; I. & S. No. 4736, Switching Charges at Decatur, Illinois, will be consolidated and heard, without further hearing, in Ex Parte No. 104.

Who appears in these two proceedings for the respondents?

Mr. SMITH. E. A. Smith, of the Illinois Central Railroad Company.

Mr. BUTLER. R. F. Butler and H. G. Powell, for the Illinois Terminal Railroad.

Mr. DYCHE. In Ex Parte 104, Part II for the Pennsylvania Railroad Company.

Mr. GOEBEL. For the Baltimore & Ohio Railroad Company, in Ex Parte 104, Part II.

Com. PATTERSON. Are there any other appearances for the respondents?

(No response.)

Who appears for the A. E. Staley Manufacturing Company?

Mr. BURCHMORE. Mr. C. C. Le Forgee, General Counsel, of Decatur, and myself, and Mr. J. C. Burwell, Vice President and Traffic Manager, is also present. He will, however, participate as a witness.

Com. PATTERSON. Who appears for the Commission?

229 Mr. LOVERING. Mr. G. V. Lovering, appearing as counsel for the Commission.

Com. PATTERSON. Are there any other appearances for the Commission?

(No response.)

Mr. STRASSER. Mr. N. S. Brown and L. H. Strasser, for the Receivers of the Wabash Railway.

Com. PATTERSON. Examiner Weaver will sit with me in this case. The issues in the reopened Ex Parte 104 proceedings are set out in the Commissions order of July 29, 1939, with which you are no doubt familiar, while I. & S. No. 4736 involves proposals of the Illinois Central Railroad, Illinois Terminal Railroad Company, and the Wabash Railroad to cancel the $2.50 switching charge now applicable for the spotting of cars at points of loading and unloading within the Staley plant.

The respondents may proceed.

Mr. SMITH. I will call Mr. Miles.

R. I. MILES, was sworn and testified as follows:

DIRECT EXAMINATION

Mr. SMITH. I think we might distribute that exhibit first Mr. Miles.

(Exhibit referred to, distributed to parties present.)

By Mr. SMITH:

Q. Give your name to the reporter, Mr. Miles.

A. R. I. Miles.

230 Q. Where do you live?

A. Chicago, Illinois.

Q. What is your position with the Illinois Central?

A. I am chief commerce agent of the Illinois Central System.

Q. How long have you been in the traffic department of the Illinois Central?

A. I have been in the freight department of the Illinois Central System for twenty years.

Q. What, in general, are your duties?

A. Handling cases before the State and Interstate Commerce Commission.

Mr. SMITH. Mr. Commissioner, we will ask that the Exhibit that has just been distributed be identified as Exhibit No. 17.

Com. PATTERSON. It will be received and identified as Exhibit No. 17.

(Exhibit 17, Witness Miles, marked for identification.)

By Mr. SMITH:

Q. Mr. Miles, when did the Staley Company begin operation at Decatur?

A. The A. E. Staley Manufacturing Company purchased the plant at Decatur in June 1909, and started grinding operations in March 1912.

Q. Has the Illinois Central served the plant at the Staley Company since 1912, when it first began grinding operations?

A. It has.

Q. Now, I wish you would turn to page 1 of your exhibit
231 and explain how it has served the Staley plant since that time?

A. As shown on page 1 of my exhibit No. 17, consisting of 18 pages, a statement showing the method the Illinois Central has served the plant of the A. E. Staley Company at Decatur since it started operation, at first, from April 1, 1912, or from the time it started operation in March—I start with April due to the fact that I could not take our tariff back of that date—and from April 1, 1912 to May 1922, we absorbed the switching of the Wabash and the Baltimore & Ohio, which roads reached the plant of the Staley Company.

Q. That is, you mean you absorbed the switching charges of those two roads?

A. That is correct; from May 1922 to April 2, 1930, we absorbed the switching of the Wabash and Baltimore & Ohio roads, which roads made a terminal allowance to the Staley Company for services beyond the interchange with the plant tracks. From April 3, 1930 to June 24, 1936, we operated over a joint I. C., I. T., and Pennsylvania Railroad track.

Q. What do you mean by I. T.

A. Illinois Terminal Railroad, and I will explain later the construction of that track.

Q. Well, right there at this time. Mr. Miles, what was that track, what did it consist of?

A. That was a track constructed from the connection with the Illinois Terminal to the Staley plant, connecting with their
232 yard.

Q. And how were operations conducted over that track, that is, who did the switching over the track?

A. The Illinois Central did the switching over that track.

Q. For the——

A. For the Illinois Terminal and the Pennsylvania.

Q. Did the Illinois Central operate a part of distance over a track owned by the Illinois Terminal, too?

A. It did.

Q. And let me ask you this question: During this period from April 3, 1930 to June 24, 1936, was an allowance paid to the Staley Company for performing the terminal services within the plant?

A. That is correct; there was.
Q. By these two roads?
A. By these three roads.
Q. Now, your next.
A. From June 25, 1936 to June 14, 1937, operation over joint I. C., I. T., and Pennsylvania tracks, and payment to Wabash of expense for service beyond interchange with plant tracks.
Q. That is, what was the Wabash doing during that period?
A. The Wabash was taking it from our interchange with the Staley Company and placing the cars at place of unloading in the Staley plant and receiving the cars from place of loading in the Staley plant.
Q. Well, then, beginning with that date had the Staley
233 Company ceased to perform its own switching?
A. That is correct.
Mr. BURCHMORE. Beginning with what date?
Mr. SMITH. June 25, 1936.

By Mr. SMITH:

Q. Now, the next?
A. From June 15, 1937, to November 14, 1937, operation over joint I. C., I. T., and P. R. R. track, payment to Wabash of expense for service beyond interchange plant tracks, and payment by the Staley Company of intraplant switching charge of $1.80 per car for service beyond interchange with plant tracks.
Q. Now, what is the significance of that date, June 15, 1937?
A. That was the effective date of the Commission's order in Ex Parte 104.
Q. Well, you mean the Staley Company case?
A. That is correct, supplemental order 55.
Q. Yes; 55th supplemental order.
Mr. BURCHMORE. Pardon me, Mr. Smith, to avoid misunderstanding, it was the date that the order finally did become effective.
Mr. SMITH. Yes.
The WITNESS. That is correct.
Mr. BURCHMORE. It was postponed——
Mr. SMITH. Postponed.
The WITNESS. From time to time.
Mr. BURCHMORE. From time to time.

By Mr. SMITH:

Q. Now, your next?
234 A. From November 15, 1937, to December 10, 1937, operation over joint I. C. C. R. R., I. T. R. R., and P. R. R. track, payment to Wabash of expense for service beyond interchange

with plant tracks and payment by the Staley Company of terminal charge of $2.27 per car for services beyond interchange with plant tracks.

From December 11, 1937, to date, absorption of Wabash switching charges of 13 cents per ton, minimum $2.70, maximum $4.95 per car.

Effective March 28, 1938—that is the Ex Parte 123 increase—14 cents pe rton, minimum $2.97, maximum $5.45 per car, and payment by Staley Company to Wabash Railway of terminal charge of $2.27—effective March 28, 1938, that went to $2.50—per car for service beyond Wabash Railway, interchange with plant tracks.

Then on the bottom block, effective—it was published to become effective December 15, 1939, and suspended in I. & S. docket 4736 provision that operation and joint I. C. R. R., I. R. R. and P. R. R. track and beyond interchange with plant tracks, to and from loading and unloading locations in plant, at line haul rates to and from Decatur.

Q. That is the provision that is under suspension here?

A. That is correct.

Q. Mr. Miles, did the Staley Company perform its own switching prior to the time it was paid the flat allowance?

235 A. The A. E. Staley Manufacturing Company was not performing its own switching service prior to the time it was paid an allowance by the railroads. Prior to the plant allowance the railroad serving the plant performed the service.

Q. I should have asked you, Mr. Miles, this exhibit was prepared by you or under your personal direction; was it?

A. That is correct.

Q. And is it true and correct to the best of your knowledge and belief?

A. It is.

Q. Now then, for how long, Mr. Miles, did the line haul rates of the Illinois Central, in actual practice and effect, include delivery to the plant and receipt of cars by the railroads at the plant?

A. For twenty-five years and three months.

Q. Have you examined the traffic department files regarding switching at Decatur, and particularly switching at the Staley Company's plant?

A. Yes.

Q. Did you find whether any question was ever raised during this twenty-six year period or thereabouts, by the railroads or by the Staley Company, respecting the extent of the services covered by the line haul rates?

A. There is no record of any question having been raised with respect to the line haul transportation rates, including receipt of

traffic to and from loading and unloading locations
236 in the A. E. Staley Manufacturing plant.

Q. From the standpoint of a traffic man, would you say that under those circumstances the rates became impressed with the service at the plant, the service of delivery—the line haul rates being impressed with the service of delivery at the plant?

A. It did, and, as shown on page 1 of my exhibit, from April 1st through June 14, 1937, our line haul rates included delivery and receipt from the plant, that is, the loading and unloading places at the plant.

Q. Then, when was this question first raised?

A. The Commission's decision, in its 55th supplemental report, 215 I. C. C. 656, decided May 22, 1936.

Q. And, as Mr. Burchmore pointed out, the order there was postponed until——

A. June 15, 1937.

Q. That was the effective date of the order?

A. That is correct.

Q. What did this order require the railroads to do?

A. To cease paying allowances.

Q. What prompted the railroads then to assess a terminal charge?

A. The finding that the transportation services covered by the rate began and ended at certain interchange tracks.

Q. Are these tracks any longer used as interchange tracks?

A. They are not.

237 Q. What is the position of the Illinois Central with respect to this matter?

A. Our position is that the line haul rates include the service of placing the cars at unloading points within the Staley Company's plant and of removing cars from the loading points as served for over twenty-five years.

Q. Now, Mr. Miles, you have referred to this plant track. Will you give a brief history of that track?

A. In 1921 we investigated to determine the advisability of serving the Staley plant, then located on the Wabash and C. I. & W., either by trackage rights over the latter or by the construction of our own track. We were unable to reach an agreement as to trackage rights and concluded in 1925 that the expenditure for construction would be greater than warranted by the traffic.

In 1927, expansion of Staley operations caused the matter to be reviewed and construction of the track, in which the Pennsylvania and Illinois Terminal agreed to join, was authorized December 28, 1928, in order that these roads might better serve the plant. The track was placed in service April 3, 1930.

Q. Mr. Miles, right there, you referred to the C. I. & W. That is now the Baltimore & Ohio, is it not?

A. That is correct.

Q. It was the Cincinnati, Indianapolis & Western?

A. Its cost was, to the Pennsylvania and Illinois Ter-
238 minal, $65,629.59, and to the Illinois Central $69,637.35, total $200,896.53, which included the expense of $93,036.50, equally divided among those three roads, incident to highway grade separation.

Q. Is this track as built now being used, Mr. Miles?

A. It is not.

Q. Why not?

A. It has not been used since December 10, 1937, when we received advice from the Staley Company that there was no occasion or necessity, from the standpoint of the desires or convenience of the Staley Company, of placing out-bound or in-bound cars on the interchange tracks and that the cars should be moved to and from the points within the plant where cars are loaded or unloaded, through, to or from their interstate destinations in an uninterrupted movement.

By Com. PATTERSON:

Q. You had a physical connection there during this time, you could have made the deliveries?

A. Yes, sir.

Q. Does the Illinois Central absorb connecting line switching charges on all traffic at all points?

A. Yes, sir.

By Mr. SMITH:

Q. At the present time to whom are we delivering traffic that is destined to points within the plant and coming from the plant, Mr. Miles?

A. We are delivering them to the Wabash road.

239 Mr. SMITH. I might say, we will later have an operating witness from the Illinois Central who will testify as to the exact manner in which the interchange was affected.

By Mr. BURCHMORE:

Q. Well, you are delivering to and receiving from the Wabash at a point several miles away from this plant, are you not?

A. That is correct. We are using the joint track that was established—that was constructed for us to serve the Staley plant in transferring cars with the Wabash Railroad.

By Com. PATTERSON:

Q. But that is on instructions of the Staley Company?

A. Yes, sir.

Mr. BURCHMORE. I beg your pardon, I don't know, your Honor, that I quite understood your question or the answer.

Com. PATTERSON. The question was, are deliveries now made to the Wabash Railroad on instructions of the Staley Company. His answer was, yes.

Mr. SMITH. Mr. Miles referred to the letter he got from the Staley Company, stating that it was no longer necessary from their standpoint to place cars on the interchange tracks.

Mr. LE FORGEE. I didn't understand you.

Mr. SMITH. I said Mr. Miles referred to the letter he got from the Staley Company, stating that there was no longer any occasion or necessity, from the standpoint of the desires or con-
240 venience of the Staley Company, of placing out-bound or in-bound cars on the interchange tracks, and that cars should be moved in through movement.

Mr. LE FORGEE. Do I understand that is what he means by the word "instructions"?

Mr. SMITH. Yes.

By Mr. LE FORGEE:

Q. Is that correct?

A. That is right.

By Mr. SMITH:

Q. Now, Mr. Miles, what is it costing the Illinois Central today to effect delivery and to obtain cars at the Staley Company's plant under existing conditions?

A. There is a minimum and maximum charge, the minimum being $2.97 and the maximum $5.45 per car.

Q. What did it cost us in 1939, that is, as applied to the total shipments moved by the Wabash for the account of the Illinois Central?

A. In 1939 it cost us $4.63 per car.

Q. What is the total?

A. The total, $52,002.06.

Q. And in 1938 how much?

A. The total was $40,886.74, or an average of $4.56 per car.

Q. Have you got there—I have forgotten, Mr. Miles, you must have gotten it—the number of cars that were handled for our account?

A. In 1938, 8,965 cars; in 1939, 11,238 cars.

Q. Now, Mr. Miles, turning to page 2 of your exhibit,
241 what rule in the Illinois Central tariff applies generally on the Illinois Central in so far as the placing of cars at industries is concerned?

A. Rule 42 of our terminal tariff, which I have reproduced on page 2 of my Exhibit No. 17, and I have there shown a history of that rule from April 1, 1912 to date.

Q. Was it in effect prior to 1912, Mr. Miles?

A. It was.

Q. Do you know how long?

A. No; I don't.

Q. Was it many years?

A. It was in effect for many years prior to that time.

Q. Then what is the substance of that rule, Mr. Miles?

A. The substance is that no switching charge will be assessed by the Illinois Central Railroad Company for our switching service performed by it at destination or origin on carload freight arriving via or received direct at switches, tracks, warehouses, or industries reached by or in connection with the tracks of the Illinois Central System.

Q. And your rule in effect today is substantially the same rule, is it?

A. That is correct. The only exception that has been made to that rule over the entire Illinois Central System was on November 15, 1937, in connection with the Staley Manufacturing Company, as shown in the third column of the exhibit.

242 Q. Just a minute, the third what?

A. The third column.

Q. You mean block, don't you?

A. In the third block; yes.

Q. Is there any place on the Illinois Central System where the Illinois Central makes a spotting charge today for itself?

A. There is not.

Q. Except at the Staley plant?

A. Except at the Staley plant.

Q. Then is there any exception to the universal application of this rule except at the Staley plant?

A. No, sir.

Q. I am referring now to where the Illinois Central itself makes a charge against the industry?

A. Yes, sir.

Q. And has the Illinois Central followed this rule in actual practice throughout the years on its system?

A. It has, with the exception of the Staley plant.

Q. Yes. Well, is there any case in the Illinois Central System, or on any other railroad, so far as you know, Mr. Miles—Well, I will confine it to the Illinois Central System—where we deem our rates as including only the service up to, for example, the break-up yard at the point of destination?

A. No, sir.

243 Q. What do you consider, from your experience in the traffic department, a freight rate to include?

A. I consider a freight rate to include delivery to the place of unloading in a plant, or receipt from the loading platform or building in the plant.

Q. Or a team track?

A. Or a team track.

Q. Or warehouse. Mr. Miles, you have had occasion to examine the switches and terminal tariffs of the Illinois Central a great many times, have you not?

A. I have.

Q. Does the Illinois Central reach, through switching absorptions, plants located in terminal districts that are not served by the engines or rails of the Illinois Central?

A. Yes, sir.

Q. What arrangements are made for the doing of the work under those circumstances?

A. We absorb the switching charge of the lines serving the plant.

Q. And what does that absorption, so far as the practice of the Illinois Central is concerned, include?

A. It includes the delivery by the switching carrier of cars at points within the plant, and removal of cars from such points.

244 Q. Do you know of any exception, so far as the Illinois Central is concerned, to that rule, except the exceptions here before us?

A. None.

Q. Now, I think you stated what the Illinois Central is paying the Wabash for performing the switching service, and they are shown on the first page of your exhibit 17?

A. That is correct, and it is also shown on page—that is, the page making that charge is shown at page 14 of my exhibit.

Q. Now, in the case of interstate shipments to and from the Staley plant, how far does that charge take the cars so far as interstate shipments are concerned?

A. Interstate shipment takes it to the plant connection only; that is, the interchange connection of the Wabash and the plant.

Q. Now, when you come to an intrastate shipment, how far does that same charge take the cars?

A. On intrastate shipments that same charge takes the shipment to the point of loading or unloading within the Staley plant.

Q. Is there any difference between those services?

A. None; no, sir.

Q. Now, what are your pages 2 to 5, Mr. Miles of Exhibit 17? Will you state briefly what they show?

A. I have explained page 2, covering the switching by the Illinois Central Railroad. Page 3 covers the absorption of switching at Decatur, Illinois. Page 4 is a continuation of
245 the history covering the absorption at Decatur from April 1, 1912, to date. Page 5 is a history showing the terminal charge, the spotting charge, that was made at the Staley Manufacturing Company effective November 15, 1937.

Q. Now, what are pages 6 to 9?

A. Pages 6 to 9 is a copy of the Illinois Commerce Commission's report and order in Illinois Commerce Commission's docket 26219. That is where the Illinois Commerce Commission suspended the spotting charge that was published to become effective November 15, 1937, on Illinois Intrastate Traffic.

Q. Explain what the Illinois Railroads did in that connection, Mr. Miles?

A. The Illinois road, effective November 15, 1937——

Q. I should have said the Illinois Railroads serving Decatur?

A. Published a charge of $2.27 for spotting cars from the interchange track of the Staley Company to points of loading and unloading within the plant, and that is the charge that was suspended by the Illinois Commerce Commission.

Q. Was it the same charge that has been in effect on interstate shipments?

A. It is the same charge that was published on interstate shipments.

Q. And what did the Illinois Commission, in substance, order?

Mr. BURCHMORE. Well, they made seventeen detailed findings.

246 Mr. SMITH. Yes.

The WITNESS. That is shown on page 8 of my exhibit, Mr. Smith.

By Mr. SMITH:

Q. Well, the——

A. In effect, they held that it was unlawful to make the spotting charge.

Q. And that the rates included the service?

A. And that the rates included the service.

Q. So far as intrastate rates were concerned.

By Com. PATTERSON:

Q. Did they hold that regardless of the amount of time it took to make a spotting operation?

A. No; I don't think they refer anywhere in their order to the amount of time. They held that the charge was unlawful.

Mr. BURCHMORE. Well, Mr. Commissioner, I want to call your attention to the fact that there is no necessary conflict between the Illinois Commission's decision and the main decision in Ex parte 104, Part II, which seems to recognize that where there are conditions of substantial interference with the railroad, preventing it from performing the service at its reasonable convenience its obligation may end. We take no exception to that principle and I do not understand that the Illinois Commission sets aside that principle, where there is a substantial interference with the railroad, such as unsafe for the engines, or the engines unreasonably delayed by plant process, and matters of that kind. I think
247 you will find, by an examination of the Illinois Commission's report, that it does not make an issue of that unreasonable point.

By Mr. SMITH:

Q. Is the Illinois Commission's order being adhered to today by the road serving Decatur, Mr. Miles?

A. It is.

Q. Now, what are the last pages in your exhibit?

A. Page 10 is a proof of a tariff we propose to file, listing these specific deliveries we will make at the Staley plant. That is merely for clarification of the publications that we have already made, feeling that the publication as made and under suspension fully covers, and this is merely as a clarification stating specifically where deliveries and receipts will be made. Page 11 is a photograph of the Staley plant, on which I have indicated in red the buildings or tracks at which loading and unloading is performed.

Q. The buildings that are not colored are the buildings at which there is no loading or unloading performed, so far as rail transportation is concerned?

A. That is correct. Pages 12 to 18 is a copy of the Illinois Central Railroad tariffs involved in I. & S. Docket 4736, and I have indicated by red pencil the present and suspended items. For example, on page 12, thirteenth revised page—that is the second page—shows the present item, and one the fourteenth revised page 27–8 I have shown the item that is under suspen-
248 sion.

Q. Mr. Miles, you were furnished by me with a letter, were you not, addressed to us by Mr. Burchmore, counsel for the Staley Company, in which he listed certain soya bean and corn grinding plants, and asked us to show what arrangements we have with respect to the manner in which we reach those plants?

A. Yes, sir.

Q. I wish you would take up each one of them; first give the station, the name of the plant, then indicate the road that actually switches the plant and then point out the terminal arrangements.

A. At Bloomington, Illinois, Funk Brothers Seed Company, served by the Alton Railroad. When I refer to being served, I mean that is the road that serves the plant.

Q. That does the switching?

A. That does the switching and gets into the plant. The other roads, the Illinois Central, Illinois Terminal, New York Central, New York, Chicago & St. L., absorbs the switching of the Alton Railroad to get into that plant.

At Cairo, Illinois, Cairo Meal & Cake Co., served by the New York Central, and the Illinois Central, Missouri Pacific, and Mobile & Ohio roads absorb the switching of the New York Central to serve that plant.

Swift & Company at Cairo is served by the Illinois Central and New York Central.

249 Q. That is, two roads do the switching?

A. Two roads do the switching in that plant. Other roads, Missouri Pacific and Mobile & Ohio, who absorb the switching of either the Illinois Central or the New York Central.

At Cedar Rapids, the Honey Mead is served by the C. R. & I. C., Cedar Rapids & Iowa City; other roads serving, C. & N. W., C. M. St. P. & P., C. R. I. & P., I. C., W. C. F. & N., which roads absorb the switching of the C. R. I. & C., in serving the plant.

Cedar Rapids, Iowa, Iowa Milling Company, served by the C. M. St. P. & P., and the C. R. & I. C., C. N. & W., C. R. I. & P., I. C, and W C. F. & N., absorb the switching of the C. M. St. P. & P. in reaching that plant.

Penick & Ford, served by the C. M. St. P. & P. and C. R. I. & P.; the C. R. & I. C., C. & N. W., I. C., W. C. F. & N. absorb the switching of those roads in reaching the plant.

Champaign, Illinois, Swift & Company, served by the Illinois Central; other roads, I. T., and N. Y. C. and Wabash, which roads absorb the switching of the Illinois Central in serving the plant.

Argo, Illinois, Corn Products Refining Co., served by the Alton, B. & C. C. T., B. R. C.——

Q. What is the B. R. C.?

A. Belt Railway of Chicago—and I. H. B.

Q. What is that?

A. Indiana Harbor Belt. The B. R. C. performs the
250 switching for the four lines that serve the plant; all other Chicago lines enter by absorbing the switching of the B. R. C.

At Chicago, the Archer-Daniels-Midland Company, served by the C. M. St. P. & P., and all other Chicago lines absorb the switching of that line in serving the plant.

At Chicago, the Glidden Company, served by the C. M. St. P. & P., and all other Chicago lines absorb the switching to serve the plant.

The Glidden Company at Chicago, another plant served by the C. R. & I. and I. H. B.——

Q. That is the C. R. & I.?

A. Chicago River & Indiana. Both roads serve and switch the plant and all other Chicago lines absorb the switching of those lines in getting into the plant.

Chicago, Norris Grain Company, served by the Pennsylvania Railroad, and the other Chicago lines absorb the switching of the Pennsylvania.

Spencer Kellogg & Sons, Chicago, served by the C. B. & Q., all other Chicago lines absorb the switching to serve the plant.

Mr. BURCHMORE. Pardon me just a minute, Mr. Smith, in his testimony—I am inquiring for information—did he state the location of the Penick & Ford plant?

Mr. SMITH. Yes.

The WITNESS. Cedar Rapids, Iowa.

Mr. SMITH. Cedar Rapids.

The WITNESS. Roby, Indiana, American Maize Products
251 Co. on the I. H. B. and P. R. R., the Pennsylvania performs the switching for both lines; all other Chicago lines absorb the switching of the Pennsylvania.

By Mr. SMITH:

Q. Mr. Miles, about how many are there of these other Chicago lines that get in through switching absorptions?

A. There are about twenty.

Q. There used to about fifty, didn't there, at one time?

Mr. BURCHMORE. I think there are now, with switching and terminal.

Mr. SMITH. We had reference to the trunk lines.

By Mr. SMITH:

Q. Your last is Decatur.

A. Decatur, Illinois, Archer-Daniels-Midland Co. served by the I. C. and I. T., the Illinois Central performs the switching for both lines, the B. & O., Pennsylvania, and Wabash absorb the switching of the I. C.

At Decatur, the Decatur Soya Products Co., served by the Illinois Central, the B. & O., I. T., Pennsylvania and Wabash absorb the I. C. switching.

At Decatur, Illinois, Spencer Kellogg & Sons, it is served by the I. C., I. T., Pennsylvania, and Wabash. The Illinois Terminal performs the switching on one side and the Wabash on the other. The other lines that enter the plant absorb the switching of those two lines, and the B. & O. absorbs the switching——

Q. Right there, Mr. Miles, is there any additional charge
252 assessed against either of these three companies at Decatur?

A. No, sir.

Mr. LE FORGEE. Which two companies do you mean?

Mr. SMITH. Archer-Daniels-Midland Co., Decatur Soya Products Co., and Spencer Kellogg & Sons.

The WITNESS. Decatur. The Staley Manufacturing Company is served by the B. & O., I. C., I. T., Pennsylvania Railroad, and the Wabash. The Wabash performs the switching service for all of the lines, which lines absorb the switching charge, in addition to which the Staley Company is assessed a charge of $2.50 for spotting within their plant.

At Evansville, Indiana, American Soya Products, served by the L. & N.; the C. & E. I., I. C., Southern, and N. Y. C. absorbs the switching of the L. & N.

At Fort Dodge, Iowa, Plymouth Processing Mills, served by the Illinois Central and M. & St. L.; the C. G. W., F. D. D. M. & S. absorb the switching of those two lines.

At Gibson City, Illinois, the Central Soya Company, served by the Illinois Central, the N. Y. C. & St. L. and Wabash absorb the switching of the Illinois Central.

Indianapolis, Indiana, the Evans Milling Company, on the I. U. (Indianapolis Union Railroad.), the B. & O., C. I. & L., Erie, I. C., N. Y. C. & St. L., P. R. R., and N. Y. C. absorb the switching of the I. U.

The same is true at Indianapolis with respect to the
253 National Starch Products.

At Louisville, Kentucky, the Buckeye Cotton Oil Co. is served by the Southern Railway. The switching is performed the K. & I. T. (Kentucky & Indian Terminal.); the B. & O., C. & O., C. I. & L., I. C., L. & N., N. Y. C. and P. R. R. absorb the switching of the K. & I. T.

At Memphis, Tennessee, the Buckeye Cotton Oil Co., served by the I. C. and L. & N., the Illinois Central performing the switching for both lines, and the C. R. I. & P., Missouri Pacific, M. & O., N. C. & St. L., S. L.-S. F., St. L. S. W. and Southern absorb the switching charges to serve the plant.

Another Buckeye Cotton Oil Mill at Memphis, Tennessee, served by the I. C. and L. & N., the Illinois Central performs all

switching in the morning, the L. & N. in the afternoon, and other lines entering Memphis absorb the switching.

Mr. BURCHMORE. May I interpose?

The WITNESS. Yes, sir.

By Mr. BURCHMORE:

Q. You say one road does it in the morning and the other in the afternoon. You mean one road does its work in the morning and the other road does its work in the afternoon, or do they do for each other morning and afternoon?

A. No, the I. C. performs all the switching in the morning and the L. & N. all in the afternoon.

Q. And each does some for the other?

A. That is correct.

254 Memphis, Tennessee, Swift & Co., roads serving, I. C., L. & N., S. L.-S. F. The L. & N. switches on cars only, the I. C. and S. L.-S. F. perform all other switching alternately every two months. The C. R. I. & P., Missouri Pacific, M. & O., N. C. & St. L., St. L. S. W., and Southern absorb the switching charges in entering the plant.

Omaha, Nebraska, Allied Mills, C. B. & Q. and Union Pacific, both lines serving the plant; other Omaha lines absorb the switching.

At Peoria, Illinois, Allied Mills, C. R. I. & P. and P. & P. U., both serve the plant and perform the switching; The Alton, C. & I. M., C. & N. W., C. B. & Q., I. C., I. T., M. & St. L., N. Y. C., N. Y. C. & St. L., Pennsylvania, and T. P. & W. absorb the switching charges.

By Mr. SMITH:

Q. Now, right there, will you check that up, Mr. Miles? Isn't it a fact that the service within the plant is performed by one railroad only, the other one reaching the plant?

A. No; on the Allied Mills, the first one, the C. R. I. & P. and P. & P. U. both perform the service. Now, on the second Allied Mills at Peoria, the P. & P. U. and Peoria Terminal serve the plant, the P. & P. U. and P. T. both perform the switching to and from the plant and the P. & P. U. within the plant, and then all the other Peoria lines absorb the switching in getting into the plant.

255 By Mr. BURCHMORE:

Q. Now, those are two disconnected and separate plants, are they not?

A. That is correct, yes. At Pekin, Illinois, Corn Products Refining Company, served by the C. & I. M., P. & P. U., and P. T., all

three lines perform the switching to and from the plant, and the Peoria Terminal within the plant.

By Mr. SMITH:

Q. That is, the P. T. is the railroad known as the Peoria Terminal, isn't it?

A. That is correct. The Alton, A. T. & S. F., I. C. and N. Y. C. absorb the switching.

At Quimby, Iowa, Simonsen Rendering plant is served by the I. C. and no other roads entering the plant.

At Springfield, Illinois, Illinois Soya Products, the Springfield Terminal; The Alton, B. & O., C. & I. M., C. S. & St. L., I. C., I. T., and Wabash absorb the switching.

Granite City, Illinois, Union Starch & Refining Company, served by the T. R. R. A. and I. T.; all other St. Louis lines absorb the switching.

At St. Louis, Anheuser-Busch, Inc., on the manufacturing Railroad, all other St. Louis lines absorb the switching.

At St. Louis, the Ralston Purina Company, T. R. R. A.; all other St. Louis lines absorb the switching.

At Waterloo, Iowa, Soybean Processing Co., served by the C. R. I. & P., and W. C. F. & N., both lines performing the switching in the plant, the C. G. W. and I. C. absorbing the switching
256 charges.

By Com. PATTERSON:

Q. Mr. Miles, all these points are on the Illinois Central?

A. Yes, sir.

Q. Has this free switching service at any of these points, so far as you know, ever been investigated by the Interstate Commerce Commission?

A. No, sir.

By Mr. SMITH:

Q. Mr. Miles, at any of these places is any charge made by the Illinois Central for the service of spotting cars at the plant?

A. No, sir.

Q. Except the——

A. Staley.

Q. Staley Company?

A. That is right.

Q. Well, do the line haul rates at the Illinois Central to and from the plants that you have named in your testimony, include the service of placing the cars at points within the plant and the moving of cars from those places?

A. That is correct. Where they reach the plants with their own rails and serve the plant, it includes it, and the absorption includes it where they do not reach the plant.

Q. Did I ask you—I think I did—these points that you just named were in the list furnished us by Mr. Burchmore,
257 counsel for the Staley Company?

A. That is correct.

Mr. SMITH. I think that is all.

Cross-examination by Mr. ORCUTT:

Q. Mr. Miles, in connection with your exhibit 17, on page 1, the historical data that you show there and that you outlined in your testimony, as to the method used by the Illinois Central in serving the Staley plant at Decatur, is equally true, is it not, as to the Pennsylvania Railroad, down to the last block on the page?

A. Yes, sir; the Pennsylvania and the Illinois Terminal.

By Mr. GOEBEL:

Q. Mr. Miles, directing your attention to page 1 of your Exhibit 17, the period from June 25, 1936, to December 10, 1937, do you know under what arrangements the Wabash did the work in the Staley plant?

A. Yes; they performed all of the service for all lines and the expense was prorated.

By Mr. SMITH:

Q. That is, that was under a pool arrangement?

A. That was under a pool arrangement.

By Mr. GOEBEL:

Q. Have you any data as to what the cost was to the railroads per car under that pool arrangement?

Mr. SMITH. We are going to—our next witness will give that.

Mr. GOEBEL. All right, that is all, then.

Com. PATTERSON. Any other cross-examination?

258 By Mr. BURCHMORE:

Q. Well, Mr. Miles, I am not sure you mentioned it in connection with page 1 and your oral statement of the history, but isn't it a fact that although the Commission's order attached to the 55th supplemental report, and which was originally effective May——

Mr. SMITH. 22nd.

Mr. BURCHMORE. No; it was entered May 22, 1936——

Mr. SMITH. That is right.

Mr. BURCHMORE. And originally effective July 8, 1936, was successfully postponed by the Commission itself to June 1937, yet in May 1936, the Staley Company informed the carriers of its de-

cision that it was no longer interested in doing the work and receiving an allowance, and you actually went in and began doing the work in June 1936, long prior to the requirement of the cancellation of the allowance.

The WITNESS. That is correct.

By Com. PATTERSON:

Q. You perhaps had that in anticipation at the time the Commission had it under investigation.

Mr. BURCHMORE. Well, we covered that by our previous testimony in the other session, that previous to any announcements by the Commission—and you will observe, Mr. Commissioner, that this 55th supplemental report was over a year subsequent to the main report in 104, Part II. Now, after the main report in 102, Part II, the Staley Company came to the conclusion that it no longer desired to do the work and receive an allowance,
259 and was quite surprised when this order came out, without which an allowance would have been cancelled.

The WITNESS. I can give you the dates on which the order was extended, if you care to have them, Mr. Commissioner.

Mr. BURCHMORE. Yes.

Com. PATTERSON. I think we have them on the record, of course.

Are you through?

Mr. BURCHMORE. Yes.

Com. PATTERSON. Any other cross-examination?

Mr. LOVERING. Yes; I have one or two questions.

By Mr. LOVERING:

Q. Mr. Miles, you spoke about the cost in 1939 of $4.63 per car, I believe is what you stated?

A. $4.63 per car; yes.

Q. That cost is the reciprocal switching expense average cost per car?

A. Yes, sir.

Q. Does not include any other factor?

A. No, sir.

Q. You have a figure of $4.56 for 1938?

A. That is correct.

Q. Do you have the 1937—no; that wasn't effective. When did that become effective?

A. December 11, 1937.

Q. Will you please state again—as I recall it, you said that the line haul rate on the I. C. included delivery to places of
260 loading or the receipt of freight from loading points.

A. Yes, sir.

Q. Is that regardless of any interference or anything of that kind, intermediate switching which may be involved?

A. Yes, sir; we do that at all points on our line.

Q. Regardless of interference?

A. Yes, sir. In other words, I don't know of any plant where we have any interference to keep us from going into it.

Q. But you don't know all those plants, though?

A. No, sir.

Q. In other words, you are not the operating man?

A. No, sir.

Q. You listed, Mr. Miles, a great many places on your line where you absorbed the delivery charges?

A. Yes, sir.

Q. Can you tell me, at all of those various points, if the service provided included the delivery of the final loading and unloading point.

A. It did; yes, sir.

Q. And that, again, is regardless of any intermediate interference there might be?

A. I assume that there are none.

Q. But you don't know?

A. None that I know of, no, sir. However, it included delivery.

Q. At the final——

261 A. At the final point, that is correct.

Q. Mr. Miles, referring to the 55th supplemental report, is it the position of the Illinois Central that the conclusion therein, that the service being provided at that time was unlawful—is it the position of the Illinois Central that that is incorrect?

Mr. SMITH. I am rather inclined to think, Mr. Lovering, that is a position that counsel ought to state. Of course, I think we have got to bear this in mind: We are now dealing with a wholly different factual situation than what the Commission there had before it.

Mr. LOVERING. That is true.

By Mr. LOVERING:

Q. Well, put it this way, Mr. Miles: Would it be your proposition, either at the Staley plant or anywhere else, that the service should include the delivery at the final loading point or the receipt of freight from the final unloading point, in spite of any interference there might be?

A. No, I think some interference would have something to do with it.

Com. PATTERSON. Is that all?

Mr. LE FORGEE. Just one question, if your Honor please.

By Mr. LE FORGEE:

Q. In response to Mr. Lovering you mentioned something, whether you considered certain interference. In your answer to that question have you considered the arrival
262 of the train in the yard, the breaking up of the train, and where, under the direction and control of the railroad company, cars were taken from that and in the various operations delivered to the consignee?

A. No, I meant interference—I think curvatures of track in some places might have something to do with it, and I had reference to with that respect.

Q. Yes, and nothing else.

A. Nothing else; no, sir.

Mr. LE FORGEE. That is all.

By Mr. LOVERING:

Q. Then your interpretation of interference does not cover all interference there might be to the uninterrupted movement at the option of the railroad?

A. No, sir; I don't know of any plan at any place where you would have any more interrupted movement.

Mr. LOVERING. Repeat the question. I don't think you quite answered the question.

(Question read.)

The WITNESS. No, sir; I don't know of any other interference.

By Mr. LOVERING:

Q. You are restricting the word "interference" then?

A. Yes, sir.

Q. Considerably. All right.

Mr. SMITH. That seems to be all.

263 Com. PATTERSON. That is all.

(Witness excused.)

Mr. SMITH. Mr. Lyrla.

K. H. LYRLA was sworn and testified as follows:

Direct examination by Mr. SMITH:

Q. Give your name to the reporter, Mr. Lyrla.

A. K. H. Lyrla, L-y-r-l-a.

Q. Where do you live?

A. Chicago, Illinois.

Q. What position do you hold with the Illinois Central?

A. Statistician, Illinois Central.

Q. What, in general, are your duties?

A. Practically everything in connection with the accounting department of a supervisory nature, as well as handling the pres-

entation of cost data before the various State and Interstate Commissions.

Q. How long have you been employed in the accounting department of the Illinois Central?

A. I have been employed by the Illinois Central about eighteen years; the accounting department fourteen years of that time.

Q. Mr. Lyrla, did you examine personally the bills we made against the Illinois Terminal and the Pennsylvania during the period of time that this track was operated jointly to reach the interchange tracks of the Staley Company?

264 A. Yes, sir; I did.

Q. Now, will you state first just what segments went to make up that so-called joint track; where the segments began and where they ended?

A. At the time we decided to begin to serve the Staley's plant through our own track, it was necessary that we construct a connection with the Illinois Terminal Company from our main line of our Decatur-Champaign district track.

There was constructed a connection 691 feet long. Then we used the tracks of the Illinois Terminal Company from that point around to the connection of a track which leads into the Staley Manufacturing Company's plant.

The new track was constructed of joint ownership of the Pennsylvania, the Illinois Terminal, and the Illinois Central.

Q. You are referring now to this third segment of the so-called joint operation?

A. Yes, sir; the one which connects directly with the plant of the Staley Company.

Mr. BURCHMORE. Mr. Smith, may I inquire? Perhaps the Commissioner is not familiar with this, geographically. It is a point shown in the record in Exhibit 15.

Com. PATTERSON. No, I am not familiar with it.

Mr. SMITH. Yes, I think that would be very helpful.

Mr. BURCHMORE. This is my copy of Exhibit 15 in this record. You perhaps should—— (Handing Exhibit 15 to

265 the Commissioner.)

The WITNESS. Talking from Exhibit 15, that would be designated as from point A around to, I believe it is point F.

Mr. LE FORGEE. Suppose you look at the map?

Mr. BURCHMORE. That is the plant there. (Indicating to the Commissioner.)

Com. PATTERSON. What is the scale of this map?

Mr. BURCHMORE. It is about two and one-half miles from one side of that blueprint to the other, I believe.

Com. PATTERSON. That is, at a tangent it is about two and one-half miles, or the way the track goes.

Mr. BURCHMORE. I think the way the track goes it is two and one-half miles, Mr. Commissioner.

The WITNESS. I don't think it will exceed that.

Mr. BURCHMORE. The exact measurements are in the——

Mr. LE FORGEE. Just a minute.

(Discussion between counsel outside the record.)

By Mr. SMITH:

Q. Now, who performed the switching over that track, Mr. Lyrla?

A. The Illinois Central performed the switching during the entire period from the date the service was placed in operation in April 1930, until the first part of December 1937.

Q. Now, what did you find was the average cost per car so far as the maintenance of the track was concerned during this
266 period?

A. The total maintenance of the track during the entire period resulted in an average of 12 cents per car; that is, per loaded car.

Q. Per loaded car?

A. Yes, sir.

By Com. PATTERSON:

Q. That is track maintenance only?

A. Yes, sir. The transportation, yard transportation, expense amounted to $1.27 per loaded car. That covered the total expense of moving a car to the yard within the Staley's plant.

By Mr. SMITH:

Q. What was the average cost per car during the time the Wabash was performing the service under the pool arrangement?

A. That was during the—from the latter part of June 1936, up through the first—the early part of December 1937. The expense per car averaged $2.77, that is per loaded car also, making a total of $4.16 per car.

Q. Now, what is the average that we paid the Wabash last year in the reciprocal switching arrangement?

A. $4.63, I believe Mr. Miles——

Q. Then in addition the Staley Company paid $2.50?

A. $2.50 per car.

Q. Making a total of $7.13?

A. Yes, sir, which compares with the $4.16 under the old arrangement.

267 Q. I want to make it clear, Mr. Lyrla. These items of 12 cents per loaded car and $1.27 reflect the average cost during the entire period of the joint operation of the track?

A. Yes, sir; covering the entire period. A long period of that nature is far better for maintenance than attempting to take one year or a shorter period.

Q. What item went to make up the maintenance of the track, Mr. Lyrla, as shown in the bills?

A. Well, that would cover any repairs made to the track or the roadbed, replacement of ballast, anything related to the track structural accounts there.

By Com. PATTERSON:

Q. Is that track used for any other purpose?

A. Portions of it are used; yes, sir. That is the Illinois Terminal main line.

By Mr. SMITH:

Q. Now, what went to make up the transportation expense?

A. The transportation expenses are the yard transportation accounts, 377 through 389. In other words, these are direct yard accounts.

Q. Mr. Lyrla, you did not attempt to restate these accounts at all, did you?

A. No, sir; I have taken the amounts as they were recorded on the bills and vouchers in the records of our company.

Q. These were the actual amounts that were assessed
268 against the cars, as shown in our bills?

A. Yes, sir; and vouchers.

Q. And vouchers. And $2.77 is the amount that the Illinois Central paid the Wabash?

A. Yes, sir; that is the average that all companies paid to the Wabash, either the Pennsylvania or the Illinois Traction.

By Mr. BURCHMORE:

Q. Well, it was uniform, each road paid the same per car?

A. Yes, sir; the basis of apportioning the expense was on a loaded car basis, which makes the same amount to each company.

By Com. PATTERSON:

Q. Why did you make it on a loaded car basis, don't they use an excess of a certain class of empties in the Staley plant and likewise don't a certain amount of empties come out of the plant, they don't reload all the cars that go in?

A. No, sir; they do not, and that is the reason why it was placed on a loaded car basis. If we just took the cost per car, either loaded or empty, we would have a far lower cost that would not reflect quite the true situation.

Q. Well, that is pretty much a matter of opinion there.

A. We would like to do that.

Mr. BURCHMORE. Well, if one road got a great preponderance of the empties it would make quite a difference, but if each road got its same proportion of empties it would not make much difference.

269 Com. PATTERSON. Well, if these extra cars were included, it would bring the car rate down.

Mr. BURCHMORE. Oh, yes.

The WITNESS. Yes, sir; considerably. As I recall, the percentage of empty movement to loaded movement is around 66 percent, which is rather high.

By Mr. SMITH:

Q. But your average of $4.63, covering the reciprocal switching, is, of course——

A. That is a complete service.

Q. It is loaded——

A. Yes, it includes the movement of the loaded car and the empty car.

By Com. PATTERSON:

Q. Whether or not the car goes in loaded?

A. Yes, sir.

Q. Or comes out loaded?

A. Yes, sir.

Mr. SMITH. That is all, thank you.

Cross-examination by Mr. BURCHMORE:

Q. You attempted no breakdown as between state business and interstate business?

A. No, sir; we did not. To get into such a detailed study would require quite a long time to attempt to analyze it.

By Com. PATTERSON:

Q. Did that charge include the cost of making up and breaking up trains of cars?

A. No, sir, that is not included. In order to carry the
270 service for complete switching service within the terminal limits here, we would have had to have conducted a time study here on the ground, and we have not had time, in fact, we did not know until a short time ago that this was to be a point of interest insofar as the Commission was concerned, and we have not had time to prepare a time study in the terminal.

Com. PATTERSON. Cross-examine.

By Mr. LOVERING:

Q. Just one question, Mr. Lyrla, will you tell me, as to that $4.16 per loaded car, what period that covered?

A. That is built up—the maintenance of way—that is, the maintenance of tracks and the transportation covered the entire period of operation from April 1930, through December 1937, but the Wabash plant switching covered a shorter period; it was a time of June 1936, through December 1937.

Q. Do you have any figures showing what the average cost per loaded car to the I. C. is for in and out of Staley for 1939?

A. No, sir; we did not perform any service in 1939. You see, we interchanged to the Wabash.

Q. I understand. What I was getting at was the average cost to the I. C. of handling cars. In other words, when you receive—when a loaded car comes in to Decatur, you have reciprocal switching charges and certain other expense. Now, the previous witness gave the average expense per car based on reciprocal switching?

271 A. Yes, sir.

Q. Now, are there any other charges which the I. C. pays or any other benefits they receive which would make that amount lower or higher?

A. There are no other charges. However, I am speaking now of—in the way of switching charges or any revenue charged or credit; but, of course, we do have the expense of handling and classifying the car in our yard after the train arrives or before departure, and handling that car from the train yard to the interchange track.

Now, according to my best judgment, from the experience I have had in connection with switching studies, it would seem to me that there would be a little more expense in connection with the present method of handling to interchange with the Wabash than there was during the period of time that we were using our own track.

The reason for that is that the interchange track is rather limited as to the number of cars that it will hold and would require making quite a few more trips per day.

By Mr. BURCHMORE:

Q. Which interchange track?

A. That is the interchange track that is being used at the present time.

Q. Between the Illinois Central and the Wabash?

A. And the Wabash; yes, sir.

By Mr. LOVERING:

272 Q. Can you tell me, then, what the status is from the standpoint of cost to the Illinois Central today as compared with what it was back when Staley was doing its own switching?

A. To the extent of what I have available here, and as I just stated, I think that the interchange is a little more expensive, it costs us more today than it did at the time——

Q. Than it did in 1936?

A. Yes, sir.

Mr. LOVERING. All right.

Com. PATTERSON. That is all.

The WITNESS. Thank you.

(Witness excused.)

Com. PATTERSON. We will take a five minute recess.

(After recess.)

T. R. BEACH, was sworn and testified as follows:

By Mr. SMITH:

Q. Give your name to the reporter.

A. T. R. Beach.

Q. Where do you live?

A. At Decatur.

Q. What is your position with the Illinois Central?

A. Trainmaster.

Q. State briefly the experience you have had in the operating department of the Illinois Central.

A. For twenty-eight years in various capacities, twelve
273 years as agent and operator at small stations, four and a half years as freight agent at Springfield, eight years as yardmaster at Springfield, three and a half years as trainmaster.

Q. What are your present duties?

A. Trainmaster in the Peoria district, between Mattoon and Peoria.

Q. How long have you held your present position?

A. Since last August 1st.

Q. And prior to that time where were you located?

A. Trainmaster at Paducah, Kentucky.

Q. Are you familiar, Mr. Beach, with the manner in which the Illinois Central cars are handled to and from the plant of the Staley Company?

A. Yes, sir.

Q. Describe the manner in which they are handled at the present time?

A. Cars coming in on the Illinois Central trains are switched in the yard, assembled, and those going to the Staley Company are delivered to the Wabash at the regular interchange.

Q. Where is that interchange track located?

A. Located just north of the interchange of the Wabash and Illinois Central tracks, north of the Illinois Central depot.

Q. Now, describe how the billing is handled on those cars?

A. Carloads coming in consigned to the Staley Company are in most cases consigned to a certain building within the
274 Staley plant. Those cars, the waybills go to our freight house and they notify the Wabash freight house the car number and the building number the car is to be placed at. The cars are then delivered to the interchange track. That is true with the exception of grain. Grain is held for the regular inspection.

Q. That is, the state inspection?

A. Yes, sir.

Q. How is that handled?

A. That is held on a track for inspection until it is released and then is delivered in the same manner.

Q. Well, then, do I understand that the directions as to placement within the plant are all given by the Illinois Central to the Wabash direct?

A. Yes, sir.

Q. I think you just stated that the interchange is located near the station, the Illinois Central and Wabash passenger station?

A. That is correct.

Q. Now, how are cars handled in the reverse direction?

A. Cars to be moved out over the Illinois Central, the bill of lading is furnished by the Staley Company to the Illinois Central agent, who, in turn, gives that car number to the Wabash agent, and, as I understand it, he transmits that to their yard clerk
275 in the Staley yard, who gives their foreman a list of the cars to be delivered to the Illinois Central.

Q. Are those cars then switched by the Wabash engine?

A. Those cars are switched by the Wabash engine and delivered to the Illinois Central on the regular interchange track.

Q. Where the Illinois Central picks them up?

A. That is correct.

Q. Is it a fact that the billing on the cars is given direct to the Illinois Central by the Staley Company?

A. Yes, sir.

By Mr. BURCHMORE:

Q. You mean the bills of lading?

Mr. SMITH. The bills of lading.

The WITNESS. The bills of lading, yes.

By Mr. SMITH:

Q. And you work from there, then, so far as giving directions to the Wabash are concerned?

A. That is correct.

Q. In your experience on the Illinois Central, Mr. Beach, what does the reciprocal charge in the territory over which you have jurisdiction include?

A. In all cases that I have had experience with, the tariff charge includes the delivery to the point of unloading or loading, the taking from the point of loading.

Q. Have you found that to be true so far as placement of cars at tracks within plants are concerned?

A. Read the question.

(Question read.)

276 A. Yes, sir; that is correct.

Q. What are the largest industries in Decatur, Mr. Beach?

A. The Staley Company, I would say, is one of the largest, the Archer-Daniels-Midland Company, the Spencer Kellogg Company. There are a number of other large ones.

Q. What would follow the Spencer Kellogg in importance or size?

A. Perhaps the Mississippi Valley. I am not sure of that, however.

Q. That is the steel company?

A. Yes, sir.

Q. Now, how do you reach the Mississippi Valley Steel Company?

A. By delivery to the B. & O. through a reciprocal switching arrangement.

Q. That is, the B. & O. place the cars at points within the plant?

A. They do.

Q. Where is the Mississippi Valley plant located?

A. East of the Illinois Central tracks about half a mile.

Q. How do you reach the Spencer Kellogg plant?

A. Those cars are delivered to the Illinois Terminal under a pool arrangement at the regular interchange track and are placed by the Illinois Terminal.

Q. And is that work performed under the reciprocal switching charge that we pay the Illinois Terminal?

277 A. No, it is performed under a pool charge or a cost plus charge.

Q. How do you reach the Archer-Daniels-Midland Company?

A. By Illinois Central tracks direct.

Q. And do you switch for any other company?

A. For the Illinois Terminal.

Q. What other railroad reaches that plant?

A. No other railroad besides the Illinois Central and Illinois Terminal.

Q. And how do the Pennsylvania cars get in there; also the B. & O. cars?

A. Through a reciprocal switching arrangement.

Q. Do you handle any switching arrangement for them?

A. We would; yes.

Q. And does that charge include the placement of a car at the track within the plant?

A. It does; yes.

Q. What is the nature of the business of the Archer-Daniels-Midland Company?

A. Soybean products, the grinding of soybeans and the products from the soybean.

Q. Is that a new industry at Decatur, that is, the Archer-Daniels-Midland Company, is that a new plant?

A. It is.

Q. What is the business of Spencer Kellogg?

278 A. The grinding of soybeans and the products therefrom.

Q. Has the processing of soybeans come to be a very important part of the industrial activity at Decatur?

A. It has; yes.

Q. Now, you are not now switching the plant of the Staley Company, are you, Mr. Beach?

A. We are not; no.

Q. The Wabash is doing that. You are familiar, however, with the track layout, are you not, and the location of the buildings within the plant?

A. Yes; I am.

Q. Does the Staley Company ever call upon you to have the work done, that is, call upon you so far as the Illinois Central cars are concerned, to have the work done at the special convenience of the Staley Company?

A. No, sir.

Q. Have you ever heard, from your contact with the local situation, of any interference on the part of the industry in connection with switching operations of the plant?

Mr. LOVERING. I am going to object to that question. That is hearsay. I think that question is entirely immaterial.

Com. PATTERSON. Objection sustained as to what happened in the Staley plant. You are not doing the work there now.

Mr. SMITH. No, but he has pretty close—well, I will let that go.

279 By Mr. SMITH:

Q. Then the Wabash men.

Mr. BURCHMORE. May I just understand what the nature of that objection is?

Com. PATTERSON. He objected to the——

Mr. BURCHMORE. He says it is immaterial.

Com. PATTERSON. No, he did not say it was immaterial, he said he was speaking from hearsay. He asked him if he knew what happened there. The Illinois Central doesn't do the switching in the Staley plant.

Mr. BURCHMORE. Well, I understood the question to be whether this official, who is in charge of the service here in the district of the Illinois Central, had heard or that there had come to his attention officially, in the routine conduct of his business, any instances of interference so far as the Illinois Central is concerned.

Com. PATTERSON. Well, it would still be hearsay. I don't mind his answering the question but it is still hearsay and it isn't a part of the trainmaster's job to determine what is going on over in the plant of some other railroad.

Mr. BURCHMORE. No, he was asked as to the Illinois Central.

Com. PATTERSON. I did not understand it that way.

Mr. BURCHMORE. Have you had any complaints or information come to you as trainmaster of the Illinois Central; as far as what the Illinois Central does, is there any interference, and so forth?

Com. PATTERSON. That is an entirely different question.

Mr. LOVERING. Please read the question.

Mr. LE FORGEE. Don't you think the better way would be to strike this original question and ask another?

Com. PATTERSON. Yes, strike that.

Mr. BURCHMORE. I was so anxious to get the fact.

Mr. LOVERING. I may not have understood it but I understood it as the Commissioner did; I may be mistaken myself.

By Mr. SMITH:

Q. So far as the Illinois Central switching operations are concerned in the handling of Illinois Central cars, in connection with your duties as trainmaster of Decatur, have you ever found any interference on the part of the Staley Company with respect to those cars?

A. No, sir.

Q. Have they any engines to interfere with the movement of traffic to and from the plant at all?

A. No, sir.

Q. I am talking about locomotive engines.

Mr. LOVERING. Just a minute; what was that question you just asked?

(Question read.)

Do you mean interference that might be encountered in the moving of cars on interchange to the plant?

Mr. SMITH. To the plant and also with the plant.

281 Mr. LOVERING. I don't think the witness is competent to answer that question. The Wabash, I believe, handled the interchange.

Com. PATTERSON. He may be competent to answer the question. The question went so far as to ask whether there were any complaints made to him with respect to this service.

Mr. LOVERING. I thought he asked if he encountered any complaints.

Com. PATTERSON. No; whether there were any complaints made to him.

By Com. PATTERSON:

Q. Your answer was as to whether there were any complaints made to you?

A. No; there was not.

By Mr. SMITH:

Q. Have you ever had any complaints made to you by the Staley Company respecting their needs so far as switching operations are concerned?

A. No, sir.

Q. Mr. Beach, if the Commission should find as a result of this proceeding that the line haul rates include the switching service at the plant, that is, the line haul rates include the placement of cars at these points for unloading within the plant and the removal of cars from the points of loading, how could the Illinois Central handle the switching? What alternatives would present themselves to the Illinois Central?

A. There are many ways the Illinois Central might
282 serve the Staley plant.

Mr. LOVERING. Before the witness goes any farther, Mr. Commissioner, I would like to have it shown, if it can be shown, that he is sufficiently familiar with the conditions inside the Staley plant to answer that question.

By Com. PATTERSON:

Q. How long have you been here?

A. Since last August 1st.

Com. PATTERSON. I don't think there is any question about that.

By Mr. SMITH:

Q. You have been through the plant many times, haven't you, Mr. Beach?

A. Yes, sir.

Q. You know the location of the buildings, don't you?

A. Yes, sir.

Q. You know the tracks that serve those buildings; don't you?

A. Yes, sir.

Q. Know generally the manner in which the switching is now performed; don't you?

A. Yes, sir.

Q. All right, what are these different ways and these different alternatives?

A. The Illinois Central could serve the Staley plant by using their present track up to the Illinois Terminal connection and their joint arrangement over the Illinois Terminal and the joint track ownership to the east end of the Burwell yard, and
283 gain access to the plant and take their cars to and from the plant and place them at the buildings as desired. That is one way.

By Com. PATTERSON:

Q. Now, by doing it that way, could they do it without any interference or any delay in the movement?

A. Mr. Commissioner, I don't know just what kind of interference you mean, or delay.

Q. Well, you are familiar with the situation there; what kind of interference would obtain; if any?

A. No more interference than switching any plant of like size.

Q. That is right; if they could get a hole through, they could go to any of these buildings?

A. Yes. Other arrangements could be made by permitting the Illinois Central to switch certain buildings and some other lines switch other buildings, or the plant could be switched under a pool arrangement, one line doing the work for all lines.

Q. Is it anything uncommon for one railroad to do the switching a certain period and then for another railroad, or the railroads rotate?

A. No; that is a common practice at some—different places.

Q. Would there be anything uncommon in having one railroad do the switching for certain commodities and another railroad do the switching for other commodities?

A. That also could be done.

Q. You, of course, could continue your present arrange-
284 ment; could you not, Mr. Beach?

A. Yes, sir; the present arrangement could be continued.

Q. Could you, in any event, say within any degree of certainty or definiteness just how the matter could be worked out until you knew what you could do and what you should do?

A. No; with no degree of certainness could anyone, I think, say just how the matter could be handled without making a study of it.

Q. If this charge is lifted, would it be your purpose to work out an arrangement that would be the most economical and most efficient, not only so far as the Illinois Central is concerned but so far as other roads are concerned?

A. Yes, sir; and so far as the Staley Company is concerned, a satisfactory arrangement to all.

Q. Then you would have to take into consideration, of course, not only the Illinois Central but the other roads that reach Decatur?

A. That is correct.

Q. And you would have to take into consideration the Staley Company?

A. That is correct.

Q. Would you have to give consideration to your contractual rules with the labor unions?

A. Yes; some consideration should be given to that also.

Q. Do you think you would have to do that in all probability?

285 By Com. PATTERSON:

Q. Then it is your opinion that some change would have to be made if this charge was lifted?

A. No; not necessarily. The present arrangement could be continued.

By Mr. SMITH:

Q. What is the general direction of the tracks in the Staley Company's plant, Mr. Beach?

A. Generally east and west.

Q. Generally parallel to each other?

A. Yes, sir.

Q. Based upon your experience in this territory and your experience in the operating department, do you see anything unusually complicated about switching a plant like the Staley Company?

A. No, sir; I do not.

Mr. LEVERING. Mr. Commissioner, I still don't think this man is competent to give an opinion about the difficulty of switching inside the Staley plant. He has only been in Decatur a few months, I understand, and while it has not appeared how many times he has been inside the plant, it seems to me the proper witness to testify about that should be the road that is doing it and not some other line.

Com. PATTERSON. Objection overruled. I will let him tell his story. He perhaps knows the plant.

The WITNESS. Will you read the question.

(Question read.)

The WITNESS: No; I do not.

286 By Mr. SMITH:

Q. As a practical operating proposition, Mr. Beach, would you rather deliver twenty-five cars, or switch twenty-five cars destined to twenty-five different team tracks or twenty-five different industries, than to deliver twenty-five cars to a plant like the Staley Company and place them within the plant?

A. It will be much simpler and quicker and less costly to deliver the twenty-five cars to one plant.

By Com. PATTERSON:

Q. Mr. Beach, right at that point, how many possible delivery points are there in the Staley plant?

A. Mr. Commissioner, I can't answer that offhand; I am not sufficiently familiar to say how many there are.

Q. I thought you were familiar with the Staley plant?

A. I am to the extent of—in general, not explicitly.

Q. I see, you are talking in generalities, then?

A. That is right.

Mr. SMITH. Mr. Commissioner, that is shown on the map, as part of our Exhibit 17. The points are colored, the unloading points are colored, page 11.

By Mr. SMITH:

Q. Have you any cases in and around Decatur——

Mr. LE FORGEE. Just a minute, please, off the record.

(There was a discussion outside the record.)

By Mr. SMITH:

Q. Mr. Beach, insofar as deliveries on team tracks within Decatur are concerned, have you in mind any cases where there are involved switching operations in serving those

287 team tracks?

A. Yes, sir; there are several where other consignees' business is unloaded on the same track. For instance, I have in mind a track where there are three unloading racks of bulk oil stations; that you have to move the cars before you can place a car to a warehouse and there may be other cars spotted on that same track.

By Com. PATTERSON:

Q. You would not regard that as a team track?

A. Yes; we would place cars there for a man that wanted to unload in that particular locality.

Q. Well, strictly speaking, a team track is where anybody loads on the track, that you might shove the car in on the track and anybody would unload a car from wherever it might be. You would not be spotting it at the warehouse. That is a different situation.

A. Well, this track I have in mind is a long track that will serve as a team track; oil companies and a warehouse.

By Mr. BURCHMORE:

Q. All on the same track?

A. Yes, sir.

Com. PATTERSON. Yes; they might have that.

By Mr. SMITH:

Q. Well, what would you have to do, now, in serving that track?

A. In case we would have a car for the warehouse which is located at the north end of the track, it would be necessary
288 to remove the other cars, pull them out, and in some cases have the consignee of the oil companies disconnect their pipes, or have a consignee discontinue unloading a car, or loading.

By Commissioner PATTERSON:

Q. Well, now, right at this point, you are sort of getting the thing complicated. How long would you wait for them to finish unloading a car or to disconnect their oil pipes?

A. Mr. Commissioner, that would depend entirely on the circumstances in connection with it.

Q. Well, under the most difficult circumstances, how long would you hold a way freight out on the line waiting for somebody to finish unloading a car or to disconnect an oil rack from a tank car? As a trainmaster, how long would you hold him if it was at a point where you had no competition?

A. This track I have reference to is within the switching limits of Decatur——

Q. No; I am asking about what would happen generally out on the line?

A. Generally, out on the line, you would wait a few minutes and go ahead and do some other work.

Q. Suppose there was no other work there?

A. I would set a time. It would depend on——

Q. Did you ever run a train?

A. No, sir.

Q. You wouldn't wait any longer than to find out the
289 fellow didn't have it disconnected, if you did?

A. I have known cases where we did wait five, ten minutes.

Q. Oh, yes; five or ten minutes.

By Mr. BURCHMORE:

Q. You wouldn't wait for the oil man but would you penalize the poor farmer waiting to unload his car on the track beyond the oil plant. You would give him his placement beyond the oil track free?

A. Yes.

Com. PATTERSON. You would eventually, but if you had a farmer connected with it, insofar as that track was concerned, you would not wait until they disconnected the pipe?

Mr. BURCHMORE. I am directing your attention to this: Here is a country town or a small station and the very end of the track is the public team track for that town. Now, an oil rack being in between the running track and the public team track, you certainly don't deprive the public of any service because the oil company has its oil tank connected up for the unloading of a car.

Com. PATTERSON. What would probably happen in that case, they would back the tank up and connect the car in just about a three minute job, in that case.

By Mr. SMITH:

Q. Are there any other cases similar to that in Decatur?

A. There are other tracks where there is more than one consignee located on it, and many cases where it is necessary
290 to remove other consignees' cars before you can place some other.

Q. You do that every day, do you?

A. Yes, sir.

Q. And that is all done under the—you make no extra charge for that; do you?

A. No, sir.

Mr. SMITH. That is all.

Com. PATTERSON. Cross-examine.

Mr. LOVERING. I have a few questions.

Cross-examination by Mr. LOVERING:

Q. Pardon me, I did not get your name—Gates; is it?

A. Beach; B-e-a-c-h.

Q. Pardon me. You stated that with reference to the in-bound cars consigned to Staley Company, that most of them, as I understood you to say, come in consigned to a certain building. How long has that situation prevailed?

A. I can't exactly tell you how long, but for the past three or four months at least.

Q. What do you do in case a building does not show?

A. Our freight house would call the Staley Company and ask them where they wanted a certain car placed; what building.

Q. As I understand it, that applies only to miscellaneous loads and not to grain?

A. Not to grain because of the necessity of holding grain
291 for inspection.

Q. Is that inspection a compulsory inspection or can Staley authorize that car to be taken direct from your yard and turned over to the Wabash interchange without waiting for the inspection?

A. I presume they could authorize it; yes, sir.

Q. Is it compulsory on you to hold that car there unless Staley directs otherwise?

A. We are directed to hold the cars for the state inspection.

By Com. PATTERSON:

Q. By whom?

By Mr. LOVERING:

Q. Directed by whom?

A. The Staley Company.

Q. You stated that your directions as to placement within the track are all given by the Illinois Central to the Wabash direct; that is, the Wabash agent.

A. Our agent notifies the Wabash agent; yes, sir—their force.

Q. In the out-bound movement you spoke about information, as you understood it, being given from Staley to the Illinois Central agent, from him to the Wabash agent, and from the Wabash agent to the yard clerk. Why was that kind of an arrangement placed in effect?

A. I can't answer that question.

Q. Did the I. C. do it?

A. The I. C. was doing it, but as to who instructed it, I can't answer that.

292 Q. You spoke about, in your examination, a reciprocal switching charge at other localities including placement at point of loading and unloading points, or a loading point and the taking of loads from the loading point. Do you know whether in any of those cases any investigation has been made by the Commission into the situation?

A. None so far as I know.

Q. In respect to the industries here in Decatur, is that also true at Archer-Daniels-Midland and——

A. That is true; yes, sir.

Q. You spoke about the possibility of different arrangements for switching this plant here. Do you think from what you know of this plant that it is practicable for each of the railroads entering Decatur to attempt to handle their own business independently of the others? In other words, would it be practical to have six railroads attempt to switch their respective loads in and their respective out-bound loads out?

A. It is possible to do that but perhaps not the most economical.

Q. In your opinion, would it be the most economical or practical way; either one?

A. Not the most economical.

Q. Would it be the most practical?

A. It depends upon what you mean by the word "practical."

Q. I suppose "practical" there, we are getting into the question of economics, too. What I had in mind was, if you have
293 five engines trying to put train on the track at the same time, that would not be practical?

A. It is not possible to do that.

Mr. BURCHMORE. You would not want two trains in opposite directions on a single line railroad at one time, either—single track railroad.

By Mr. LOVERING:

Q. Just one more question, Mr. Beach; you referred a short time ago to a team track with three different kinds of service on it. Did I understand you had a single track leading in and then fanning out into three different spurs, or were those three unloading points all on one piece of straight track?

A. All on one piece of straight track.

Q. What unloading facilities were there for that oil or gasoline, whatever it was, that was being taken from the tank cars?

A. A rack; unloading rack, as they call it.

Q. Is that owned by the railroad?

A. No, sir.

Q. Was the entire track owned by the railroad?

A. Yes, sir.

Q. Was any portion of that track leased?

A. Yes, sir.

Q. To the oil company?

A. Yes, sir.

Q. Which portion?

294 A. The portions assigned to the oil companies and to the warehouse.

By Com. PATTERSON:

Q. Assigned to them by lease?

A. Yes, sir.

Mr. LOVERING. I have nothing else.

By Mr. BURCHMORE:

Q. Mr. Beach, you as trainmaster, I suppose, have something to do with the trains of the Illinois Central?

A. That is correct.

Q. If you have a freight train coming into Decatur; I suppose it has a considerable number of cars for a considerable number of different consignees here, ordinarily; is that right?

A. That is correct.

Q. It might have some cars for Staley and some cars for Archer-Daniels and some cars for Spencer Kellogg, and the Mississippi Valley Steel, and the Decatur Milling Company, all in the same train. It very likely would, would it not?

A. Yes, sir.

Q. Well now, when that car arrives at Decatur, do you go through an operation of classifying the cars according to which shipper they go to?

A. Yes, sir.

Q. Do you have to do any different classification service with regard to cars that are going out to the Staley plant than you do with cars that are going out to Archer-Daniels or the Decatur Milling Company or Spencer Kellogg?

295 A. No, sir; no difference whatever.

Q. No matter which concern the cars are going to, all the cars have to be classified and arranged according to who is to get it?

A. That is correct.

Q. Well now, you have spoken of the method of handling cars to Staley, but if you will look at Exhibit 17, page 11, which the gentleman who testified ahead of you gave, you will see at the extreme upper right-hand corner "Shellabarger Grain Products Company," is that now the Spencer Kellogg?

A. That is correct.

Q. They are a competitor of Staley?

A. I presume they are.

Q. Now, when cars come in to Decatur in a train and they are intended for Spencer Kellogg, you classify them and then how do they get out to Spencer Kellogg's?

A. Those cars are delivered to the Illinois Terminal connection, who places the cars on the Spencer Kellogg Company.

Q. And the Illinois Central delivers those cars to the Illinois Terminal?

A. That is correct.

Q. At what part of Decatur?

A. In the northeast part.

Q. Is that point where they are delivered to the Illinois Terminal, on business to Spencer Kellogg, shown on this map, Exhibit 15?

296 Mr. BURCHMORE. It is the other map now; Exhibit 15.

Com. PATTERSON. Yes, I know.

The WITNESS. Yes, sir; that would be delivered at the point marked "A," or "A" and "B."

Mr. LOVERING. Speak a little louder.

By Mr. BURCHMORE:

Q. The points marked "A" and "B" on the map, Exhibit 15.

A. "A" and "B."

Q. And then the Illinois Terminal takes them out to Spencer-Kellogg for your account or——

A. That is correct.

Q. At least does it. Well, now, the last that the engines of the Illinois Central have to do with those shipments is when they place them at the Illinois Terminal interchange perhaps two miles from the Spencer-Kellogg plant, or what is the distance?

A. Approximately two miles.

Q. Do you happen to know what arrangement you have with the Illinois Terminal? Do you absorb their charges or pay them a part of the operating expense or what?

A. It is handled by agreement on a cost plus basis.

Q. Well, now, where is the Archer-Daniels-Midland plant in Decatur?

A. They are located at a point about four miles——

Com. PATTERSON. Well, which is the plant you have just

297 been talking about, Spencer-Kellogg?

Mr. BURCHMORE. Spencer-Kellogg. It used to be the Shellabarger Grain Company.

Com. PATTERSON. Before he gets off of that point; when the Illinois Terminal gets hold of this cut of cars, do they shove them right over to the Spencer-Kellogg tracks? It looks to me as if there are only one or two tracks in there.

Mr. BURCHMORE. Well, this is an old map and I think they have had considerable developments since the plant changed ownership.

Com. PATTERSON. Yes.

The WITNESS. They have additional tracks there that are not shown on the print.

Com. PATTERSON. I see.

The WITNESS. That they can pull cars out there and run around them and then shove into the plant.

By Com. PATTERSON:

Q. They do that all with one movement; there is no intervening movements of any kind; is there?

A. Not to my knowledge.

Com. PATTERSON. That is all.

By Mr. BURCHMORE:

Q. Well, now, just what would that mean? Is it a simple thing that you just—the Illinois Terminal takes a car out there and knows right where to go and drops it and comes away and gets another, or do they have shifting to do?

298 Com. PATTERSON. If they have one car or if they happened to have three or four cars in the cut, they would perform the same operation, as I understood him.

The WITNESS. That is correct.

Com. PATTERSON. Yes.

By Mr. BURCHMORE:

Q. Well, do you know whether there is any considerable amount of shifting of cars about there, in and about that plant, in the course of delivering them and placing them, empties to get out of the way and all that?

A. Up until the Illinois Terminal did the switching there, the Illinois Central engine served this plant, and at that time the Illinois Central engine took their cars and placed them at the particular buildings desired, and in the course of switching there was some moving of other cars and distributing the cars to the different buildings as desired.

Q. Now, the Arch-Daniels-Midland; where are they located with reference to the Spencer Kellogg and Staley and the Illinois Central terminals?

A. They are located at a point about four miles almost directly east from the Illinois Central yard.

Q. And how do these cars that come in to Decatur over the Illinois Central and have been classified and are intended for Archer-Daniels; how do they get out to the unloading point at the Archer-Daniels plant?

A. They are handled direct to the Archer-Daniels plant

299 by an Illinois Central engine.

Q. Over what tracks?

A. Over Illinois Central tracks.

Q. And about how long is that Illinois Central track?

A. About four miles from the yard to the first switch leading to the plant.

Q. And that is a track that was constructed in the last few years; is it?

A. Last year.

Q. Last year. Is there any other traffic that uses that track other than traffic of the Archer-Daniels-Midland or contractors who are working on the buildings, and so forth?

A. Well, none beyond the crossing of the Illinois Terminal. There are some industries on the way out but——

Q. Well, it moves about four miles over a running track and then there are spur tracks within the Archer-Daniels plant; are there?

A. That is correct.

Q. Do you know about how many cars can be placed in that plant at one time?

A. Do you mean placed to the different buildings?

Q. Well, how big a plant is it?

A. With reference to track, you mean?

Q. Yes; is it a large or a small plant? Does it have a considerable amount of track capacity?

300 A. Yes; I would say it is a rather large plant; has about eight or ten tracks.

Q. And about how many cars, roughly, could the plant tracks accommodate?

A. Oh, the entire tracks would accommodate 150 or 200 cars. I can't answer that.

Q. You perhaps think it may be a growing plant?

A. Possibly.

Q. Well now, this grain that is intended for inspection; goes to the inspection tracks; do you know whether all grain that comes into Decatur goes to state inspection tracks under some general arrangement?

A. Yes, sir.

Mr. LOVERING. I don't think he is competent to express his opinion or his idea as to the grain coming into Decatur, because that includes all the different railroads.

Mr. BURCHMORE. Well, Now, Mr. Lovering——

Com. PATTERSON. I don't think that makes much difference. If all grain that comes in over the Illinois Central requires inspection, we would assume the other railroads require the same inspection.

Mr. BURCHMORE. Mr. Lovering, you asked some question and your inference was that Staley might have given them special orders. Now, I think he knows whether it is the general practice for all grain to be under state inspection.

301 Mr. LOVERING. My question just went to the point of whether or not that grain on the Illinois Central track could be—put it this way; If grain coming in for Staley via the I. C. could, if Staley so wished, skip the inspection track and be taken right along to the plant.

Mr. BURCHMORE. Well, now; I want to ask if the Commission's counsel takes the position that this is something that is done for the convenience and special solicitude of the Staley Company and if he doesn't know it to be a fact that it is the general rule all over Illinois for grain, in markets like this, to go to the inspection track, for everybody?

Mr. LOVERING. I am simply trying to place in the record what is done.

Com. PATTERSON. I want to get that inspection straight in my mind.

Mr. BURCHMORE. Yes.

Com. PATTERSON. This inspection ordinarily is done somewhere before the grain is unloaded?

Mr. BURCHMORE. Yes; it is done at Chicago, it is done at Peoria, it is done at Decatur.

Com. PATTERSON. Yes.

Mr. BURCHMORE. And it is an inspection for the joint benefit really, in the grain trade, of the sellers of the grain and the buyers of the grain.

Com. PATTERSON. Yes.

302 Mr. BURCHMORE. And Decatur is a market where all grain is inspected, only maybe once a year a car fails to get inspected, not by Staley alone but by all buyers and users and handlers of grain.

Com. PATTERSON. Yes; but it might be at times this inspection would be made in the Staley plant.

Mr. LE FORGEE. Not under the rule.

Com. PATTERSON. Then the inspection is always made on this car before it is placed for unloading in the Staley plant?

Mr. BURWELL. That is right. Now, Mr. Commissioner I might say this: That is quite a terminal market. At one time during prohibition days, it was higher than any market outside of Chicago in the state, so far as the receipts of grain were concerned. Now, grain comes in here billed, for instance, to some eight or ten grain brokers in addition to Archer-Daniels, Spencer Kellogg, Staley's, Decatur Soya Products, and Decatur Milling Company. All these cars go to the inspection track. We may buy grain from any one of these brokers; or Spencer Kellogg may buy grain, or Archer-Daniels. That is common to the market or any other market.

Com. PATTERSON. What would happen if a car got over to Staley's yard without being inspected, would you send it back?

Mr. BURWELL. No; an inspector would come over there and inspect it.

Mr. BURCHMORE. That would be something of an accom-
303 modation, wouldn't it?

Mr. BURWELL. He would not have to but he would do it as a matter of accommodation.

Com. PATTERSON. Before you leave your evidence of this Archer-Daniels, I want to get straight in my mind on it. The Illinois Central, in delivering to Archer-Daniels, brings these cars over in cuts from the Illinois Central yard direct with their own engine, that is, one engine, and——

The WITNESS. That is correct.

Com. PATTERSON. Places them, and do they place them in the proper tracks of the Archer-Daniels and then go back?

The WITNESS. Yes, sir.

Com. PATTERSON. There is no intervening switching with a movement of that kind.

The WITNESS. No; the cars are placed at certain tracks and certain buildings for loading or unloading and the engine returns.

Com. PATTERSON. Then the cars are all carded before they leave your yard, as to what their unloading spot is?

The WITNESS. Yes, sir; they have a list of where they go.

Com. PATTERSON. That is right, but that is delivered to the engine foreman before he starts with the cars from your classification yard?

The WITNESS. That is right.

By Mr. BURCHMORE:

304 Q. Now, is that any different, as you see it as a train-master, than what is done at the Staley plant?

A. No, sir.

Q. Well, now, in the case of Archer-Daniels-Midland——

Com. PATTERSON. Well, now, with respect to this Staley plant, I haven't got that exactly straight. I understood that with respect to the Staley plant you bring them over and deliver them to an interchange track with the Wabash Railroad.

Mr. BURCHMORE. No; he doesn't bring them over, he delivers them to the Wabash track over in——

Com. PATTERSON. Well, wherever he delivers them, he delivers them or takes them to an interchange track with the Wabash Railroad.

Mr. BURCHMORE. Yes; that is true.

Com. PATTERSON. Now, what does the Wabash do with them after he delivers them? Are you qualified to testify as to the movements the Wabash makes?

The WITNESS. Only generally.

Com. PATTERSON. That is right, you are not competent to testify as to that.

The WITNESS. No, sir.

By Mr. BURCHMORE:

Q. Well, now; as to cars that come into Decatur over the Wabash Railroad that are consigned to Archer-Daniels-Midland—that come over the Baltimore & Ohio to Decatur that are consigned to Archer-Daniels-Midland, who handles those cars out to Archer-Daniels-Midland?

305 A. Those cars are delivered to the connection by the Wabash, to our connection, or by the B. & O. to our connection, and the Illinois Central agent takes them from the connection and delivers them to the Archer-Daniels plant and places them for unloading.

Q. So when traffic comes into Decatur over other railroads and is intended for Archer-Daniels, the Illinois Central does the final work along the lines that the Commissioner has just referred to, that the Wabash does the work on Staley traffic coming in over the Illinois Central to Decatur?

A. That is correct.

Q. You are the final carrier to Archer-Daniels?

Com. PATTERSON. Well, there is just the point in there that he said a minute ago he wasn't competent to testify to. We know what he does so far as all railroads are concerned; they deliver Archer-Daniels' cars to the Illinois Central and the Illinois Central makes a movement over to Archer-Daniels and places the cars. Now, when it comes to the—what happens——

Mr. BURCHMORE. Well, he had not told that before, Mr. Commissioner.

Com. PATTERSON. I beg your pardon?

Mr. BURCHMORE. He had not told that before.

Com. PATTERSON. I thought he did tell that.

Mr. BURCHMORE. No, he was telling what the Illinois Central did on Illinois Central cars coming to Archer-Daniels-

306 Midland, and he said he took them over to Archer-Daniels-Midland.

Com. PATTERSON. That is right.

Mr. BURCHMORE. Now, I say a car that does not come in on the Illinois Central, it comes in on the B. & O. or the Illinois Terminal or some other road.

Com. PATTERSON. He said he did exactly the same thing so far as cars to Archer-Daniels as he did with his own cars.

Mr. BURCHMORE. He takes them from other roads and brings them over to Archer-Daniels?

The WITNESS. That is right.

Com. PATTERSON. Your next question confuses me. You said, now, is that any different than what happens in delivering cars to the Staley Company by the Wabash? Now, he said a few minutes ago that he was not competent to answer that question, he did not know what the Wabash did with them after they got them.

By Mr. BURCHMORE:

Q. Well, now, when you have traffic to Staley, you place those cars on an interchange track, from which the Wabash removes them. When the Baltimore & Ohio or the Pennsylvania or some other road brings traffic in here for Archer-Daniels, do they place it on an interchange track from which you take the car?

A. That is correct.

Q. Over to Archer-Daniels. And you are paid for that?

A. At the reciprocal switching rate.

307 Q. At the reciprocal switching basis. And you place those cars in the Archer-Daniels-Midland plant at points where they are unloaded?

A. That is correct.

Q. Suppose Archer-Daniels-Midland has a shipment to make out over the Illinois Central Railroad to a place—to St. Louis or Chicago or somewhere do they give you the bill of lading?

A. If it goes via the Illinois Central.

Q. And do you go get the car from the place where it was loaded?

A. That is right.

Q. Well, now, suppose they make a shipment from that plant, that is, to move out over the Baltimore & Ohio Railroad to Baltimore, we will say, what would you have to do with that?

A. That car is taken from the building where it is loaded and delivered to the interchange track of the line that gets the haul.

Q. By whom?

A. By the Illinois Central.

Q. Do you have the bill of lading on it?

A. No, sir.

Q. Where do you get your instructions to go get that car?

A. Those cars are listed to us by the Archer-Daniels people, as to what line they go to, and in addition to that the line that gets the road haul instructs us that they have the bill of lading.

308 Q. And you render a switch bill against that line for that car?

A. That is correct.

By Com. PATTERSON:

Q. Now, when you get this car going to the Baltimore & Ohio from Archer-Daniels, you take it from the point where it is loaded and you bring it in a straight and expeditious movement over to the interchange track of the Baltimore & Ohio, don't you, or do you?

A. Well, not necessarily. That car would come from the Archer-Daniels plant and be shoved into the yard, and when——

Q. Into what yard?

A. The Illinois Central yard.

Q. I see.

A. And when other cars are made up for the delivery to the B. & O., why, it is made—delivery is made to the B. & O.

Q. And that would be true with respect to all other railroads?

A. That is true.

Q. Is the interchange track between the Illinois Central and the Baltimore & Ohio between the Archer-Daniels plant and your classification yard, or is it beyond your classification yard?

A. Well, it is south of our classification yard; in other words, south of our passenger station, south of the Wabash main line.

Q. Well, then it is in between the Archer-Daniels plant and your classification yard. You would have to go through your classification yard to get to the B. & O. transfer?

A. Well; yes, sir.

309 Q. Yes.

A. Either through it or by it.

Q. Yes; you would have to go by it; but if the B. & O. or any other road had an interchange track on that line between the Archer-Daniels Company and your classification yard, you would not haul these cars by the interchange track and bring them into your own yard, would you, as a yardmaster?

A. Not necessarily, although they could be in a case of—depending on how many cars you had and who they were for.

Q. No; I mean if they were all going to the B. & O. transfer?

A. Oh, no.

Q. You would stop and set them out, would you not?

A. Yes, sir.

By Mr. BURCHMORE:

Q. Where you have from Archer-Daniels-Midland, on a given day, quite a number of cars that are going out to various destina-

tions over various roads, do you have to classify those cars before—you would select out those that are going to leave Decatur in road haul trains in the Illinois Central and those that are going to be turned over to the Baltimore & Ohio, and so forth?

A. Generally speaking that is done at the plant, depending on the room there. They are usually—the different lines are switched together.

Q. That is done at the plant?

A. Yes, sir.

310 Q. Who does it at the plant?

A. The Illinois Central.

Q. The Illinois Central engine?

A. Yes.

Q. The plant does not have engines with which they do that work for you?

A. No, sir.

Q. It is work that has to be done by switching engines and it is done by switching engines of the Illinois Terminal?

A. That is correct.

Q. Do you handle the shipments from Archer-Daniels that move out over the Wabash?

A. Yes, sir.

Q. Just how do you handle them?

A. Those cars are handled in the same manner. They are moved by an Illinois Central engine from the plant to the Illinois Central yard and are bunched and delivered to the Wabash at the regular interchange track in the same manner as other cars.

Q. And then you turn those cars over to the Wabash at the Illinois Central-Wabash interchange in Decatur?

A. That is correct.

Q. And when you turn them over to them do you select—do you classify those cars so that the Wabash has the cars that are going west separated from those that are going out towards Chicago and those that are going out towards St. Louis and those

311 that are going out towards Detroit and different lines?

A. No, sir.

Q. You don't know how the Wabash would go about making—incorporating those cars into their trains in the various directions to which they run?

A. No, sir.

Q. They probably would have to classify them?

A. Yes, sir.

Q. You take them from the Archer-Daniels-Midland plant over to the place where you turn them over in bulk; all the cars there are for the Wabash are turned over together to the Wabash. Then

they have to do whatever may be necessary in the way of switching to incorporate them into their road haul trains?

A. That is correct.

Q. Mr. Beach, I am not sure that all of us may agree as to what are interruptions and what are interferences, but you have had some experience as a trainmaster in railroad operating——

Mr. LOVERING. Mr. Commissioner—what is your question; what constitutes interruptions and interferences?

Mr. BURCHMORE. No; it wasn't that. I would like to have a little candor about this thing. It seems to me——

By Mr. BURCHMORE:

Q. I want you to express your view on this, Mr. Beach, as applied to this situation here. I can see that large plants, by reason of narrow gauge tracks and manufacturing processes
312 and plant engines and unreasonable demands and requirements and all that, may have a condition where the engines of a railroad switching the plant would be delayed or the track might be in such shape that the engines would be subject to derailment or the insufficient clearances might endanger the safety of the employees, or the demands or the requirements and necessities of the industry itself might take so much time that it would be unreasonable to expect the railroad to do the work. Now, you can picture those conditions, I suppose.

Now, from your familiarity with the Archer-Daniels-Midland plant and with the Spencer Kellogg plant and the Staley plant and their tracks and their requirements, is there anything in any of these plants that in your mind creates a condition of interruption, of interference, or unreasonable time, that a railroad trainmaster would consider an interruption an interference that made it no longer your duty to switch them?

Mr. LOVERING. Object to that question.

Mr. BURCHMORE. That is a mighty fair question.

Com. PATTERSON. I don't see anything the matter with it.

Mr. LOVERING. He is asking the witness to pass on what is the Commission's own function.

Mr. BURCHMORE. No.

Mr. LOVERING. It is up to the Commission to say what is an interruption.

Mr. BURCHMORE. And they have said it.

Mr. LOVERING. And it is merely up to the witness to give
313 the facts.

Mr. LE FORGEE. He is there and he sees what is taking place.

Com. PATTERSON. I don't see anything the matter with the question. What his opinion is is only worth what his opinion is worth.

Mr. BURCHMORE. Well, it is his observation, and so forth.

Com. PATTERSON. It is his observation.

Mr. LE FORGEE. It is the fact as to what he sees. If there is anything considered interference, he is stating the fact, not his opinion, as to what constituted it.

Mr. LOVERING. It seems to me the witness should be confined to what he saw.

Com. PATTERSON. Will there be any witnesses here to show what the facts are?

Mr. LOVERING. At the Staley plant, yes, sir.

Com. PATTERSON. You can produce those witnesses to show what those witnesses saw, if you have them. If he is testifying as to what he saw in the Staley plant, he can testify to it.

Mr. LOVERING. I have no objection to his testifying to what he saw.

Mr. BURCHMORE. We have not had a statement from counsel for the Commission as to what counsel for the Commission conceives to be the law or what he wants to bring out here or anything else.

314 You haven't asked as to the position of the Staley Company but I want to say that we do recognize the force and the meaning in the Commission's main report in 299–11. We want to say to you that we have asked the railroads and we want to continue to ask the railroads, at their convenience and according to their reasonable convenience and according to the best operating practice, to switch this plant, and we don't want to make any request for any service that we are not entitled to, that we don't pay for. But we do not believe and we take the position that there is not any condition in this plant that is peculiar to this plant or different than plants generally to justify the chopping off of the rate or the imposition of a $2.50 charge at this plant.

Now, then, you have the operating men. We have had eight or ten divisional service men in this plant for weeks and weeks and weeks, under special instructions, running around trying to find interference or interruption. I don't know what they think about it but we are contending that there is nothing peculiar about this plant, and I ask your Honor if you want to hear from the trainmasters who are here; who have to consider for the Illinois Central what they want to do in the future in serving the plant, if they have got an idea whether there is or is not an interference; aren't we entitled to know it?

Com. PATTERSON. I think so.

Mr. BURCHMORE. I think the witness perhaps understands the question.

The WITNESS. My observation of the Archer-Daniels
315 plant and the Spencer Kellogg, and in several trips in walking through the Staley's yards, is that their track conditions and their interferences are at a minimum. Their track condition is good and the clearance is good and I see no unusual conditions within the Staley plant or any other plant that I mentioned any different than any ordinary plant that I am familiar with.

Mr. BURCHMORE: That is all for me.

Re-direct examination by Mr. SMITH:

Q. Mr. Beach, I want to know—I want to ask this question: When you get cars for the Archer-Daniels-Midland from Wabash, we will say, and the Baltimore & Ohio, and the Pennsylvania, do you classify those cars in your own yards before you take them to the plant of the Archer-Daniels-Midland?

A. The cars consigned to Archer-Daniels are gathered up from the connections by different engines and are all assembled in the yard. Then perhaps the same or a different engine takes them all out to the Archer-Daniels plant.

Q. Well, do you undertake any classification so far as the placing is concerned in your yards before taking them to the plant, for convenience and expedition in placing the cars?

A. Oh, for instance, we probably would gather the—all the grain together, or the empties for loading together. That might be in some case or it might not, depending upon the time and the room involved.

316 Q. Then you would handle each particular movement as would bring about the most efficiency and economy in operation at that particular time?

A. That is correct.

Q. Dependent upon the circumstances?

A. Yes, sir.

Q. Now, you have said that the Illinois Terminal is now switching the Spencer Kellogg and that you formerly switched it. Is the present arrangement a more satisfactory and possibly a more efficient and economical way of doing the thing, the business, taking all the railroads as a whole?

A. In my opinion it is; yes.

Q. Does that illustrate to your mind different methods that can be devised to handle the work in a more satisfactory and more efficient way for the railroads as a whole?

A. It does.

Q. Before the Illinois Terminal took it over for all the railroads, was anyone performing it besides the Illinois Central, or were there two roads in there?

A. The Illinois Terminal and the Illinois Central were performing the work. In addition, on the south side, the Wabash also served the plant.

Q. Do the Wabash continue to serve the plant?

A. They are, yes.

Q. And the Illinois Terminal is doing it for the Illinois
317 Central and the Illinois Terminal now?

A. That is right.

Mr. SMITH. That is all.

Com. PATTERSON. That is all.

(Witness excused.)

Com. PATTERSON. We will take a recess until two o'clock. I guess we better make it two-fifteen; we are a little late.

(At 1:00 o'clock P. M., a recess was taken until 2:15 P. M.)

AFTERNOON SESSION

2:15 o'clock p. m.

Com. PATTERSON. Come to order, please.

J. L. SHEPPARD was sworn and testified as follows:

By Mr. SMITH:

Q. Give your name to the reporter?

A. J. L. Sheppard.

Q. Where do you live?

A. Chicago.

Q. What is your position with the Illinois Central?

A. Freight traffic manager in charge of rates.

Q. How long have you been freight traffic manager in charge of rates?

A. For about a year.

Q. How long have you been in the service of the Illinois Central?

A. Forty-four years.

Q. What position did you have prior to the time you
318 were freight traffic manager?

A. I was assistant traffic manager in charge of what they call the St. Louis area of the Illinois Central.

Q. Prior to that——

A. Prior to that time I was general freight agent at the Illinois Central in charge of rates at Chicago for a period of about three years, and prior to that time I was general freight agent of the

Illinois Central, Southern Lines, with headquarters at Memphis, which position I occupied for a period of about seven years.

Q. All dealing with rates?

A. All dealing with rates; in fact, my rate and traffic experience extends over a period of thirty-seven years. Prior to that time I was in the operating department, local freight house and terminal offices for a period of seven years.

Q. Has it been part of your duties in recent years to make freight rates?

A. Yes, sir; for quite a number of years; in fact, for the last twenty-seven years.

Q. Mr. Sheppard, in connection with the making of such freight rates as you have had to deal with, what are the services that, in the making of those rates, you considered was included within the rates?

A. Well, speaking of carload rates which are involved in this proceeding, in addition to the line haul rates, which I mean
319 the transportation haul from—the transportation services between the origin and destination, they include the terminal services, which include the placement of a car for loading at the originating point and the placement of a car at the destination point for unloading either on team tracks or industrial tracks.

Q. Have you had occasion in the course of your daily work to make rates to and from industries that had different places for the loading and unloading of freight within their plant area?

A. Oh, yes; in fact, all of the larger industries and many of the smaller industries have more than one location for the loading and unloading of the freight, and, as I said, the rates include the placement for loading and unloading at convenient locations within the plants and on team tracks.

Q. Have you undertaken to chop the freight rate and try and divide it between line haul and terminal service?

A. I never have.

Q. In any case?

A. I don't recall any at this time.

Q. As the man in charge of rates and divisions in the Illinois Central System today, is that your present practice?

A. The present practice is to make the rates, as I say, and that is taken into account in making the rates; that is, the terminal services and the line haul services. And, unless
320 there is something unusual in connection with either the line haul or the nature of the commodity or the nature of the terminal service, why, the rates include those particular services.

Q. We have heard references this morning, Mr. Sheppard, to the word "interference". From a traffic standpoint, what meaning would you ascribe to that word?

A. What I would construe as the meaning of "interference" would be something that would prevent us from accomplishing or performing the service which ordinarily we would perform under the making of a rate from the origin to the destination, and which, as I said, includes all of the services from the time the car is spotted for loading until it is spotted at the proper place for unloading.

Q. What might they be, for example?

A. Well, there might be instances and there have been instances where shippers failed to keep their tracks in order, and that we can't get into the industry for that account. In that case, why, we don't consider that we are obligated to place the cars on those tracks or to use those tracks until they are put in safe running condition.

There might be other cases where curvatures in the plant were such that they could not be negotiated by an ordinary switch engine. Another instance would be where the buildings were so placed as to prevent the switching of the plant with the ordinary switch engine.

321 Those are some of the things that I would consider that might be an interference and might prevent you from doing the things that you are obligated to do under your rates of transportation, and which I have described.

Q. Have there ever been any instances where the mere fact that five railroads reached a certain locality, that the industry was placed under a handicap because there were five roads there instead of one?

A. Certainly not. The fact that five roads want to get into an industry means that the industry has got considerable business and which they all wish to participate in, and which they feel that they can be serving the industry with their own engines or reaching the industry they can render a better service than they can through ordinary switching or reciprocal switching.

And we have any number of industries up and down our railroad where we have built into the industry for the purpose of serving them and according them what we term Illinois Central service, and certainly the industry should not be handicapped and we never undertake to handicap the industry by the fact that we want to get into the industry and serve it. In fact, we feel that getting into the industry, why, we are doing our own selves a service rather than the industry.

However, the more lines that serve an industry, in my opinion, the more keener—or the keener, rather is the com-
322 petition and the better service the industry gets. But there is certainly no reason why you should put a handicap on an industry because it grows to such proportions that more than one railroad would want to serve it, and certainly, where railroads have built in to serve an industry, it would be a gross injustice, in my opinion, to compel some of the railroads to discontinue the service to that industry.

Q. The question of how a particular industry, where there are several railroads in the locality, should be switched, who would be the one to determine that under all the circumstances?

A. That is a railroad problem, where more than one railroad builds into an industry. The manner in which the industry shall be served by more than one railroad is a railroad problem, as I see it, rather than an industrial problem, and certainly we would so treat it on our railroad.

Q. If that were not true, would you then have to say to an industry that it must move out to a local station where only one railroad serves it?

A. They must either do that or tear up the tracks of all competitive service and refuse to let you connect with their tracks.

Q. Let me see if I get your meaning there. That is, the industry would confine its in- and out-bound movements, line haul, to one railroad alone?

A. That is true.

323 Mr. SMITH. That is all.

The WITNESS. I would like to say this, Mr. Smith: That I had intended to put in some of the things that you have gotten by Mr. Miles, because I had personally handled that matter, but on account of absence, I had to be away from headquarters for several weeks and Mr. Miles prepared the information and I wanted him to put it in because it was first hand information prepared by him; but he certainly covered the story and covered what we intended to do fully and his position is a clean statement of the position of the Illinois Central as developed by me personally in the handling of this matter.

Mr. BURCHMORE. Mr. Commissioner, may I ask a question or two at this point?

Com. PATTERSON. Yes.

Cross-examination by Mr. BURCHMORE:

Q. You suggested, Mr, Sheppard, an alternative, or I guess Mr. Smith suggested an alternative, that the industry could move out in the county and thus be no longer a five railroad industry. But take the situation that Staley is in right now. Bear in mind

that as a matter of law a shipper has the right to route his traffic over the different routes that the carriers have in the tariffs.

Now, is not the tariff situation as regards rates to Decatur such that if Staley wishes to ship to almost any place in the United States, almost any commodity, it could, by tendering that
324 traffic to the Wabash Railroad under the operation of the reciprocal switching, get a routeing that would make the Wabash take it over to the connection with the other railroads and no other railroad participate in the route from the Staley plant? Do you get my point?

A. If I get your point it is this: That the tariffs are so construed that Staley can route all of its business out over the Wabash if he elects to do so.

Q. No, put it this way: If Staley be regarded as situated only on the Wabash Railroad——.

A. Yes.

Q. Suppose any connections with other railroads are taken up and the only physical connection is with the Wabash; the tariffs are such that, being local to the Wabash, the Staley Company can ship out of Decatur without the Wabash taking the traffic from the plant, on any of the five railroads as line haul carriers?

A. That is true.

Q. Because you have an absorption?

A. That is true.

Q. What I am getting at is, at Chicago, for instance, if an industry at Chicago is situated on the Indiana Harbor Belt Railroad, that situation, because of the absorption tariffs, in a sense puts it on any railroad out of Chicago?

A. That is true.

Q. And is not the situation, in a practical sense, the
325 same here at Decatur?

A. That is right.

Q. Under the absorptions?

A. That is true.

Mr. BURCHMORE. To avoid controversy, really to save discussion, as a preface to asking Mr. Sheppard this further question, I want to direct his attention and yours, sir, to the Commission's definition of interruption and interference in the decision in 209 I. C. C. 11. That is this proceeding. At page 44 of this decision it says:

"When a carrier is prevented in its ordinary operating convenience from reaching points of loading or unloading within a plant without interruption or interference by the desires of an industry, or the disabilities of its plant, and so forth, under circumstances as set forth more specifically in Rules 8, 9, and 10

of the appendix, the service beyond the point of interruption or interference is in excess of that performed in simple switching and team track delivery, and so forth."

And in Rules 8, 9, and 10 of the appendix you find the definitions. Now, it says the service between the point of interchange and the point of loading or unloading, as the case may be, shall be charged to the railroad, providing its progressive movement to a point of placement or delivery can be performed without plant interruption or interference. If plant interruption
326 or interference is encountered, the service after such interruption or interference shall be charged to the plant.

Then Rule 9: "The following is a partial list of what shall be considered as plant interruption or interference:

(a) The convenience of the plant, such as service in excess of normal operations.

(b) Plant interruptions that interrupt or interfere with movements of switching locomotives.

(c) Hold cars for advice from plant as to disposition.

(d) Weighing for account of the plant.

(e) Locomotive grain operations, then the interruption or interference with movements of switch locomotives.

(f) Operation of plant locomotives while engaged in performing the work, and so forth.

(g) Maintenance or construction work where it interferes with economic switching operations.

(h) Cars waiting for instructions from the plant."

And Section 18 of Rule 10 says:

"On cars weighed for information on account of the plant, the scale is the point of interruption or interference."

Now, the question I want to ask of Mr. Sheppard is this:

Com. PATTERSON. Before you ask the question, do you agree with that report and the rules that you have just read?

Mr. BURCHMORE. Why, yes; sensibly interpreted, yes, sir; and the only reservation I make on that is this: If—and I
327 heard men give them this construction—if it be thought that those words mean that there is an interruption of the engine in its route to the loading plant has to stop the wheels to do a little switching because they have got a good many cars to handle or something like that. If it means an uninterrupted movement in the sense that the wheels of the engine don't stop, why, of course, I don't agree with that.

Com. PATTERSON. Do you agree that it is the responsibility of the Interstate Commerce Commission to interpret those rules and the order?

Mr. BURCHMORE. I think it is the responsibility of all of us, sir.

Com. PATTERSON. Well, let me state it a little different. Do you agree that the decision must finally be made by the Interstate Commerce Commission, subject, of course, to review by the courts?

Mr. BURCHMORE. Yes; if you will be sensible about it, Mr. Commissioner.

Com. PATTERSON. Well, if we should be and the courts should be.

Mr. BURCHMORE. Why, I think so, except there is higher responsibility than the Commission. That is, the truth will find its own level and ground. If you are asking for our position, or my position, I will say you cannot move freight in volume in this
328 country unless you allow railroad operating men to switch plants, to move trains and other things, with due regard to what ought to be railroad operating methods and without interference by their customers.

Now, in serving a plant—and it is either a right plant or a wrong plant—but if the railroads can come in there and in their own way switch that plant without any interference or interruption that we create, and there is nothing peculiar about that plant, why, we think it is within their obligation.

Com. PATTERSON. Well, if the judgment of the carriers had always been what it should have been, there would have been no occasion for the Interstate Commerce Commission.

Mr. BURCHMORE. Well, yes; I think so, Your Honor. But I may say this: Would Your Honor like to receive proof that the evils that prompted your investigations of 1910 and 1912, and even this last one, had been corrected, that the situation has been corrected, that there isn't anything more there, instead of indulging in the presumption that things are still wrong all over the country? Well, I am starting to digress, perhaps, when I meant to simply lead up to this: Without taking a lot of words, Mr. Commissioner, I would like Mr. Sheppard to express his opinion of the man——

By Mr. BURCHMORE:

Q. I think you are the senior official of the Illinois Central Railroad who has to do with the fixing of its rates, in a sense?

A. Yes; reporting direct to the vice president.

329 Q. You are the chief officer of responsibility?

A. That is right.

Q. Well now, in your discussion of what your rates include and what you meant to uncover, did you have in mind any substantial disagreement with a sensible interpretation of this language that I have directed attention to, that if the plant interferes with your work you don't propose to do it, but if things are reasonably open

to your convenience and no excessive demands for operation, and so forth, that it is within your rates?

A. That is right.

Q. Well, now, do you, as having to do with the rates from Decatur, know of anything that is peculiar or is it in your judgment a normal situation here as regards these plants at Decatur, as to the service they get and the manner in which it is done?

A. I have had occasion, Mr. Burchmore, to not only study the plants and make investigations on the ground, but also to study reports of others who have made investigations, and we have found nothing in the service that we presume or would be expected to presume, under our line haul rates here, that would not be ordinarily included in the line haul rates.

Q. Now, the previous witness—there were some questions asked about this inspection of grain. I will ask whether you know as to the general practice on the Illinois Central in Illinois, whether grain is, as a general practice, inspected at all
330 markets?

A. It is.

Q. Do your tariffs provide for the placement on inspection track and the removal from the tracks at markets without any charges other than the freight rates?

A. That is my recollection of the tariffs, that they have a provision to that effect not only in Illinois but in other states. The same is true of other markets outside of Illinois.

Q. Memphis, for instance?

A. Memphis for example.

Q. And Omaha?

A. Where I was located for many years we always put cars of grain on the inspection track for governmental inspection or for the merchant exchange inspection, one or the other.

Q. Now, I don't ask you to say whether that is a carrier's obligation or something that is incidental to sales, but I ask you this: Is it something that is reasonably incident to the commercial handling of grain between the farm and the final mill?

A. I think so and have always considered it a necessity.

Q. It is incident, therefore, to transportation?

A. Yes, sir.

Mr. BURCHMORE. Mr. Le Forgee.

Mr. LE FORGEE. It is suggested that I ask a question or two, if I may be permitted?

331 COM. PATTERSON. O. K.

By Mr. LE FORGEE:

Q. Mr. Sheppard, I wish you would define a little more clearly what your official position is.

A. I am the freight traffic manager of the Illinois Central System, with headquarters in Chicago, having in charge directly the method of making of freight rates on the Illinois Central System lines.

Q. You are the head of that department, are you?

A. Yes, sir.

Q. How far does your jurisdiction extend?

A. Well, over the entire system, Omaha to New Orleans.

Q. Where else?

A. I said, the entire system.

Q. That is, the entire system?

A. Yes.

Q. Approximately how many miles?

A. Well, our system is about 7,000 miles altogether.

Q. Now, is it a part of your duties to prepare the rate or the schedule or the charge for the transportation of merchandise in cars?

A. Yes, sir.

Q. How do you arrive at the conclusion as to what a rate will be?

A. From a statement of the facts in connection with the handling of each particular rate.

332 Q. Are those varied from time to time as the years go on?

A. Oh, yes. Yes, sir; they vary from day to day and vary with the commodities.

Q. What is the basis for those charges?

A. Well, there are a number of things. Commercial conditions are one of the changes, and competitive conditions are another, I mean, competitive forms of transportation, and the development of unusual things affecting the handling of traffic, and—I don't know, there is any number of things that come up from day to day. But each rate proposition you take up is a history or an item of itself, and the facts in connection with that particular item have to be considered. But generally, when you are making a freight rate, you have in mind, as I said, if I can make it clear, the entire transportation from the time it starts into the car until it is delivered at the car door at destination.

Q. And when you have arrived at the point where that rate is fixed, what do you do with it then?

A. That rate is provided then, in a tariff and published in a tariff filed with the Interstate Commerce Commission, and, after due notice, it becomes effective.

Q. Now, in the preparation of that rate or schedule, do you from time to time visit at various plants where you have patrons or consignees, with a view of ascertaining what the condition is at their respective places of business?

333 A. We undertake to do that, Mr. LE FORGEE, either personally or through what we call our outside representatives.

Q. You have men who are appointed and who do that work and report to you?

A. Yes, sir.

Q. Now, in the fixing of the rate in so far as it refers to the A. E. Staley Manufacturing Company in Decatur, Illinois, and prior to the rate of the present time, have you from time to time or at any time made that kind of an investigation in relation to that company?

A. Yes, sir.

Q. Have you ever personally visited those premises and observed the construction of the tracks, the location of the buildings, and the general situation and geographical layout of the entire property?

A. A number of times; yes, sir.

Q. Have you from time to time, during the discharge of your duties, taken upon yourself to go down there and watch the operation of cars?

A. Yes, sir.

Q. Have you also observed the method by which trains are brought in there and broken up and then distributed?

A. Yes; I have seen that, too.

Q. Haven't you found, Mr. Sheppard, as a result of your investigations, that trains coming in from the Wabash—and I
334 digress there for an instant to ask whether or not you have observed the coming in of trains of the Wabash?

A. Oh yes; I saw that the last time I was out there several weeks ago.

Q. When the trains come in on the Wabash Railway Company, they are usually placed in a particular track, are they not?

A. When they come into the plant?

Q. Yes.

A. Yes, sir; that is true.

Q. When they come into Decatur.

A. Well, I haven't observed, Mr. LE FORGEE, when they come into Decatur, but I have observed them when they come into the plant of the Staley Manufacturing Company.

Q. Do you know where those cars come from when they are taken into the Staley plant?

A. Well, I don't know of my own knowledge, except this: I do know that ordinarily they come from the terminal yards of the Wabash, one of which is adjacent to the Staley Manufacturing Company.

Q. Was that the result of the reports that are made to you by your investigators?

A. That is true; yes, sir.

Q. And information which has been reported to you and which is authentic?

A. That is right, which I considered authentic.

335 Q. When those cars are broken up in a train out there, the train usually consists of indiscriminate cars addressed for numerous and divers consignees, are they not?

A. You are still speaking in the Wabash yard?

Q. Yes.

A. Yes; the same as in your own yard.

Q. And when those cars come into your yards, they come for numerous and divers factories and consignees in and about the City of Decatur?

A. That is true.

Q. Have you observed, Mr. Sheppard, in the fixing of those rates, whether there is any difference between the method in which your employees or the employees of the Illinois Central take cars from those trains that are broken up, as compared with these service which is rendered to any other consignee in the City of Decatur?

A. Generally the same. In fact, as far as I know, they are identically the same; except we feel we do it a little bit better than the other fellow. That is natural.

By Com. PATTERSON:

Q. As a matter of fact, you know you do, don't you?

Mr. LE FORGEE. All right, waiving that delicate compliment you paid the Illinois Central for a minute, may I go on?

By Mr. LE FORGEE:

336 Q. Now, when those cars are taken out of the train, have you observed generally and in specific instances the movement of those cars from the point where they are taken from the train into the plant of the A. E. Staley Manufacturing Company?

A. I haven't observed them en route, Mr. LE FORGEE, but I have observed them as they come in from the Staley plant; yes, sir.

Q. As you have observed those, I wish you would state whether or not upon any occasion or at any time you have observed anything done or any instructions given by the A. E. Staley Manufacturing Company which in any way interferred with or caused any hindrance or delay to the railroad men in the handling and the operation of those cars?

A. I have observed nothing of that kind and nothing of that kind has ever been reported to me.

Q. What have you observed, Mr. Sheppard, if anything, with reference to the normal movement of those cars as compared with the placing of cars in tthe plants of other consignees?

A. They seem to be the same or substantially the same.

Q. From the investigation that you have made of this matter, and the study that you have made, based upon that as well as your personal observation, have you observed anything that would justify the fixing of a rate of charge against the Staley Company in addition to the rate for the line haul?

A. No; I have not, and when this matter came to my attention since I returned to Chicago, I undertook to correct it.

Q. I see.

337 By Com. PATTERSON:

Q. Mr. Sheppard, you stated, I think, in your early testimony that you had not undertaken to break down the difference between the cost for spotting cars after they came out of the train as compared with the line haul cost, in fixing a rate?

A. That is true.

Q. So you don't know what proportion of the cost should be charged to line haul and what proportion to the cost for placing the car after the road train had arrived?

A. No, sir; I have no figures to show the separation of the cost.

Q. If you found that the cost, the terminal cost, was greater with respect to one plant than it was with respect to another plant in the same town, for the same commodity, would you propose a different rate for the concerns that developed the most cost of the terminal?

A. No, sir; I would not, unless there was an unusual amount of cost to either one of the industries as above the other; but in the ordinary run of traffic there would be no separation merely because there might be some slight differences between the services at one place and the services at another, and it would only be where you would find exceptional cost that we would make any difference in the freight rates, and I don't recall an instant where we have done that, but I think during the war period we
338 had some instances where we were handling traffic for some of the war camps that we found that the services that would be required were unusual, and my recollection is that we did add something at that time.

Q. For the record, can you supply the record with that information as to where you made addition costs from the same town as between different concerns?

A. This wasn't as to different concerns, it was only as to the war camp.

Q. Oh, you charged the government more?

A. We charged the government more, as I recall it, at Camp Shelby and Hattiesburg. That was one of the routes we had on our road.

Q. Aside from charging the government more, has that happened, to your knowledge?

A. I can't recall at the moment, but I would say I would not hesitate in making a rate if I found exceptional terminal cost over and above what might be considered normal cost or normal handling, the addition of something for such services, but I don't know of any such case at this time.

Mr. LE FORGEE. I had not quite completed, if your Honor please.

Com. PATTERSON. I beg your pardon?

Mr. LE FORGEE. I had not quite completed.

Com. PATTERSON. Go ahead.

Mr. LE FORGEE. I will not be long.

339 By Mr. LE FORGEE:

Q. Mr. Sheppard, you have made all of those investigations about which you have been asked in the sense of fixing this charge, haven't you?

A. Yes, sir.

Q. This rate?

A. Yes, sir.

Q. Have you from time to time within the last six months or so made any special study in relation to this matter?

A. As to the Staley Manufacturing Company?

Q. Yes.

A. Yes, sir; I certainly have. In fact, it has been before me almost constantly in the past six months.

Q. You may state whether or not you have made any unusual study in the sense of making an examination, with the view of informing yourself correctly and accurately as to the movement of cars in and about that plant and the method in which they are handled?

A. Yes, sir; I certainly have. During the last six or eight months I have gone into this matter very thoroughly with the idea of uncovering, if possible, anything that would justify the charge that is being made, and I have come to the conclusion there very definitely that there was no justification for making the charge and that in fairness to the railroads, as well as to the Staley Manufacturing Company, it should be removed; and

I discussed that with representatives of the other railroads
340 and subsequently, and even before we filed any tariffs with the Commission, I went down and talked informally to some of the Commission's staff.

Of course, I did not expect them to make any commitments and they didn't, but I merely wanted to advise them as to what our conclusions were, and afterwards tariffs were filed for the account of the Illinois Terminal, the Wabash, and the Illinois Central, removing that charge.

And I will say this: That so far as the views as expressed by all of the railroads, there was no difference of opinion about the propriety or impropriety of the charge. There was some difference of opinion as to how it should be corrected and our conclusion was that it should be corrected by filing a tariff with the Interstate Commerce Commission stating definitely our position with respect to the charge, and that meant the elimination of the charge, and that we did.

Q. And you are steadfast in that belief at the present time?

A. Absolutely, and after I filed the first tariff with the Interstate Commerce Commission, having some intimation that probably it wasn't as clear as it should have been, I went to the Commission again with the page that is shown on page 10 of Exhibit 17, which would show specifically what we intended to do at the Staley Manufacturing Company.

Q. You may describe—before I take that up, that is page 10, you say?

A. Yes, sir.

341 Q. Will you mark that please? I want to come back to that in just a moment. In arriving at these rates about which you have been asked and in relation to which you have answered, and also in the light of your experience in this important position you hold and your experience in the traffic department, may I ask you whether or not in fixing those rates you have taken into consideration the switching of the cars from the time that they arrived at the point of destination, so to speak, as in Decatur, Illinois, and their being taken from there to the plant or the track for the consignee? Have you considered those elements in the cost?

A. Yes, Mr. Le Forgee, I will answer that very definitely, yes; but I would not want to leave the impression that on each and every rate I specifically go into the question of terminal charges, because that is not done except in the most general way.

Q. I don't mean that you do. What I mean is that in the light of your experience that is one of the elements which you, in a general way, have considered as an incident to a railroad service to its consignee.

A. It is always considered, and, as I said, the only exception that is made is when we find that there is a report of something exceptional in connection with the terminal services.

Q. And in this particular instance, after you have made your study and your survey, you are quite positive that there
342 are no such exceptional circumstances?

A. Absolutely positive.

Q. Now, have you referred to page 10 of an exhibit you have before you there, Mr. Sheppard? Will you please be good enough to tell me a little more definitely and for the benefit of the Commission just what you referred to in that sheet of this instrument?

A. Well, the first supplement or page to our terminal tariff which we filed with the Interstate Commerce Commission contained a general rule, which did not say specifically what building we would place or receive the traffic to or from. It was a rule similar to what we have all over our system. But, after thinking the matter over and hearing some of the discussion about the Staley Manufacturing Company, I had a conference with Mr. Burwell to see if we could make it any more specific than we had. I thought it was specific enough as it was except that if it could be more specific to give to the Interstate Commerce Commission I wanted to do it, and I found out that the different commodities received and shipped by the Staley Manufacturing Company go into different buildings in their plant.

Q. Yes.

A. And this particular sheet that I show—for example, it shows that sugar goes to building 17. That is one of the in-bound raw materials of the Staley Manufacturing Company. Now, as to the outbound products, for illustration, I find that the
343 starch came from building 16, 17, 20, and 23, so we provided that specifically, where we would get the starch from; and then there are any number of other commodities that come in; for example, we got borax down here, borax would go into building No. 20. And our purpose was to indicate specifically the buildings to and from which we would go to obtain or deliver the traffic.

Q. Now, Mr. Sheppard, in arriving at the conclusion that this charge in excess of the line haul to which you have referred as perhaps inequitable and unjust, in arriving at that conclusion had you considered the various items on the sheet which you have referred to as page 10 in this Exhibit 17?

A. Yes, sir.

Q. And those figures are true and correct, are they?

A. Yes, sir.

Q. With a view at arriving at a conclusion of this kind, will you be good enough to tell the Commission whether or not the

sheet which you have prepared is unusual in the sense of having prepared similar sheets for any other industry in your system?

A. It is unusual, Mr. LE FORGEE, in that the general rule applies at other industries on the railroad. We seldom undertake to separate where we will receive and deliver the traffic, but there has been so much talk about this Staley Manufacturing plant, we thought probably it would be better to designate the plant, if that would be helpful to the Commission.

344 Q. In other words, Mr. Sheppard, you mean to take this segregated instance and analyze and make this survey with a view of arriving at a definite, positive conclusion as to the propriety or impropriety of that charge?

A. Absolutely, and not only that, Mr. LE FORGEE, this is not unusual—it is an unusual publication, but it is not unusual to a plant to have several different locations in a plant. For example, in the south where I was raised, the cottonseed oil mills get cottonseed at one location. They put the cottonseed in the seed house, just like Mr. Burwell puts his grain in the elevator of the Staley Manufacturing Company. And they get the oil, they put the oil—after it is crushed it goes into the oil tanks and they load the oil out into the cars from the tanks. The cottonseed meal goes in one place and the cotton seed bulbs go in another place, and the lithers go in another place, and it is not unusual to have several different locations as to where you will place cars either for loading or unloading.

Q. Will you be good enough to advise the Commission whether or not that same rule holds good, or the same practice, to other industries other than this particular one to which you referred in the south?

A. Oh, yes; it is quite general where they have a varied manufacturing industry, where they get raw materials in and turn out finished products of different kinds.

345 Q. Now, in the light of the statement you have made as to your years of service, and the fact that there are no exceptional circumstances in relation to a plant or unloading point of a consignee, in the light of your experience, in the absence of those unusual conditions, do you regard it as an established practice in the railroad circles and railroad business for a period of thirty-five years or more, for them to ship to the consignee and spot the cars as they are today being spotted in the A. E. Staley Manufacturing Company?

A. Absolutely.

Q. From that you know of no variation, do you?

A. None that I can recall.

Q. Do you recall a railroad or a single industry where that thing has happened?

A. No.

Mr. La Forgee. I think that is all, if your Honor please.

By Com. Patterson:

Q. Mr. Sheppard, in your analysis of this situation on the Illinois Central, have you found any industry or any point in which you think a terminal charge for placing cars for unloading and picking up cars is justified?

A. No.

Q. Then the Illinois Central is perfectly clean on this proposition, I assume?

A. Well, I think so, Mr. Commissioner.

Q. And if all the other railroads were in the same posi-
346 tion, there would be no necessity for an investigation of this kind at all?

A. Well, I will tell you what, Mr. Commissioner, I agree with what you say there in some respects, but this investigation, as I understood it, was started in the matter of allowances to shippers. Now, making an allowance and performing the service is two different things. There might be some possibilities of some—well, I wouldn't say frauds but something of that kind, in making an allowance; but in performing the service and doing what your duty is under the tariff, that is an entirely different thing in my opinion.

Q. Well, have you found any situations on the Illinois Central where you thought you were justified in making an allowance?

A. Well, I will tell you this, that so far as the A. E. Staley Manufacturing Company is concerned, if we had the old basis back under which we allowed them $1.80 a car—I think that is what it was—we would be lots better off than we are today where we have to make these big absorptions that we are making down here, and I think that arrangement that we had with the A. E. Staley Manufacturing Company was the most economic arrangement that we had for the serving of the plant.

In other words, they did the work and we paid them for it and that is—of course, that is out and gone now, but I still feel that that is the most economic plan that the railroads have had here.
347 But I don't know of any plant right now where we would want to make an allowance. There have been some——

Q. And likewise you know of no plant where you think a terminal charge for such a service as we have here under consideration would be justified?

A. I can't recall a single one at this time.

Com. Patterson. That is all.

By Exam. WEAVER:

Q. Mr. Sheppard?

A. Yes, sir.

Q. How would the Staley Company benefit from your cancellation of this charge when, as I understand it, you collect no charges from the company. The Wabash collects the $2.50, does it not?

A. The Wabash now, under the setup that they have got today.

Q. Yes; and if your tariff had gone into effect, the Staley Company would not have obtained any benefit, would it?

A. I think they would, because, if our tariff had gone into effect, we would have come in there through our conection——

Q. Well, your connection has been discontinued, hasn't it?

A. No, sir; we still have the connection.

Q. Isn't the interchange spiked with the Staley Company?

A. The interchange now, as I recall it, is some place—not the interchange, no; the interchange is not spiked.

Q. You have no connection with the Staley Company, have you?

A. Oh, yes; we have. Our tracks are still connected with the Staley Company.

By Com. PATTERSON:

Q. Yes; but they are not in use?

348 A. They are not in use.

Exam. WEAVER. No; they are discontinued, according to the other record.

Mr. BURCHMORE. Mr. Examiner, they are spiked so that they would have to be put back into service, but that would be a slight expense. Mr. Examiner, may I direct your attention to something that I think you are overlooking. We construe the tariffs of the Illinois Central Railroad—and I think Mr. Sheppard will say whether this is right—we construe the tariffs of the Illinois Central Railroad as providing that the freight rates to and from Decatur include deliveries to all parties in the City of Decatur, and they would be applicable to all deliveries in the Staley plant if he had not put in the tariff this rule that he is now talking out, which says it will not apply to points at the Staley plant unless $2.50 is added.

By Exam. WEAVER:

Q. Anyway, Mr. Sheppard, if the tariff had gone into effect, the Illinois Central would have resumed its connection with the Staley Company and performed the service itself, is that right?

A. Yes, sir; that is exactly what we intended to do; yes, sir, and the track is still there and the conection is still there, and, as Mr. Burchmore pointed out, there maybe would have to be some work done on the track but the track is there and the connection is there and we want to use it.

Q. Did the Illinois Central lose traffic by the disconnec-
349 tion of this interchange?

A. I don't recall——

Q. I mean, put it this way: Does the proportion of Staley traffic handled by the Illinois Central under this arrangement stay about the same as it was when you had a direct connection with the company?

A. Well, I haven't made that comparison, as to whether it is more or less. We are constantly in touch with this——

Q. Well, it would not make any difference if it wasn't less, to you, would it?

A. Oh, yes.

Q. You would get as much of the traffic as you did before?

A. The way we figured, we have got the track in there and it is more expensive for us, on the traffic we are now handling with the Wabash, than it would be to use our own facilities.

Q. Yes; the difference in cost.

A. The difference in cost, and not only that—your are asking me the way I feel about it. Now, personally, I feel if we were in there we could get more traffic.

Mr. BURCHMORE. Mr. Examiner, if you will let me direct your attention, and Mr. Sheppard's, to this situation: He said something he did not know about.

By Mr. BURCHMORE:

Q. Do you have the tariff here that is subject to cancellation?

A. Subject to suspension, you mean? Yes; we have got that.

350 Q. Which one is it?

A. I think it is——

Com. PATTERSON. 27-C.

By Mr. BURCHMORE:

Q. Which page is the one——

A. 12, isn't it?

Q. No; it is Sperry's tariff. No; this tariff here. Sperry's tariff provides for a charge of $2.50, which it is proposed to cancel, but on page 27—Thirteenth Revised Page 27-B, which is attached to page 22 of your exhibit, it says——

A. Page 22?

Q. Page 12.

A. Yes.

Q. (Reading.) "On loaded cars forwarded from or to the plant of the A. E. Staley Manufacturing Company at Decatur, Illinois, the terminal charges as provided in agent R. A. Sperry's tariff," and so forth, "Will be in addition to the road haul rates to or from

Decatur, Illinois.". Now, that I suppose means that your grain rate from Omaha to Decatur, which would apply to any place else in Decatur, will not apply to points in the Staley plant but to points in the Staley plant $2.50 will have to be added as provided in the Sperry Tariff?

A. That is true.

Q. And if this were allowed to be cancelled, and Sperry's tariff were allowed to be cancelled, then the Illinois Central tariffs
351 would again provide as they did in the past that traffic from Omaha to Decatur, if you please, moving over the Illinois Central, moved to tracks in the Staley plant at that Decatur rate without anything added?

A. That is true.

Q. Well, now, I have assumed that if your cancellation had not been suspended, that the traffic could continue to move just as it does move but there would be no tariff authority for adding $2.50.

Exam. WEAVER. Yes, there would.

Mr. BURCHMORE. Well, where do you find it?

Exam. WEAVER. Well, the Wabash.

Mr. BURCHMORE. Oh, no, the Wabash is cancelling too, but, whether the Wabash cancels or not——

Exam. WEAVER. We assume that the Wabash would not cancel.

Mr. BURCHMORE. But they would cancel it. But let me ask you—we don't want to be at all technical about this, but I think, being technical or sensible, either way you come to the same conclusion. If the Illinois Central line haul tariff provides a rate to Decatur and their terminal tariffs say we will absorb the connecting line switching charges to make any deliveries in Decatur, we think that gives any delivery in Decatur. Now, we think that is the result.

The WITNESS. That is correct.

By Mr. BURCHMORE:

Q. Is that you opinion?

352 A. That is correct.

Mr. BURCHMORE. Now, we think if the Illinois Central takes out this rule where it says traffic to the Staley Company, Decatur, won't move at our Decatur rates, but there will be added $2.50 under another tariff, that that $2.50 is added, and if they don't, that is not added.

Now, that is the situation, and we think if this suspension were lifted and this rule here were cancelled that provides for this additional charge. Staley would get the Decatur rate just the same as everybody else gets it.

The WITNESS. That is correct.

Mr. BURCHMORE. As I understand the position of the Staley Company, we wish to offer no suggestion or make no request as to how our traffic will be handled within the City of Decatur, but it shall be handled by one road as against another, and we put the thing up to the five railroads back in 1936 to arrange to handle our traffic in the manner most convenient to them which would permit us to continue giving all of them their respective fair proportions of traffic according to where their lines run.

By Mr. BURCHMORE:

Q. And I don't understand, Mr. Sheppard, that you have received any request or any suggestion from the Staley Company that if this is cancelled there should be any change made or should—or that no change should be made in the way things are handled.

353 A. No; we have no suggestion from Staley; in fact, we are going to Staley. We want to serve the plant and you make no suggestions about that. But in response to the Examiner's question, he asked me what we propose to do, and I said we were going in there with our engines. Now, if it is developed that that isn't the most economic and practical way to handle this plant, why, then it is up to the railroads to say which is the most economic and practical, that is not a matter which I understand the Staley Manufacturing Company is interested in.

By Exam. WEAVER:

Q. That is the only way you can accord Staley any relief here, is it, to go in there with an engine and make delivery free?

A. If you confine it, Mr. Examiner, to the Illinois Railroad Company——

Q. That is what I am doing.

A. Well, under our tariff—I think that under our tariff we would have to go in there except as this: The Wabash people at the same time provide in their tariff that they would cancel the spotting charge, and we can continue even though our tariff did not go—eveh though our tariff did go into effect we could continue to absorb the Wabash switching charge, and, if they provided in their tariff no additional charge, why, there would be no additional charge so far as the Wabash is concerned.

I think you have raised a rather fine point, you and Mr. Burchmore, here. It looks to me that as long as we have pro-

354 vided in our tariff here that there would be an additional charge of $2.50, if that should be canceled and we would provide then that the rates would apply to and from Decatur, we might have to absorb what the Wabash charged, if they charged anything.

In other words, there is no reservation on this particular item that I have put in the tariff, which is that the loaded cars received and empty cars for loading by the Illinois Central would be placed for loading and unloading as the case may be, at the A. E. Staley Manufacturing Company, and the rates to and from Decatur lawfully on file with the Commission include that service.

Mr. BURCHMORE. Mr. Examiner, I agree with you that if the Illinois Central canceled its tariff providing for its line haul—canceled its tariff providing for the addition, and the Wabash did not cancel or you did not permit them to cancel the $2.50 charge, that then the only way the Illinois Central could give us relief on Illinois Central traffic would be to come in.

The WITNESS. That is right.

Mr. BURCHMORE. But if the three roads all canceled their participation in the Sperry tariff, of the $2.50 charge, and then canceled their provision such as this one on revised page 27–B, that traffic to the Staley plant will be subject to the addition of that Sperry charge, why, we get traffic in at the Decatur rate.

355 Com. PATTERSON. It might so happen that it would be more difficult for the Wabash to get into this Staley plant then it would for the Illinois Central.

Mr. BURCHMORE. Let me ask a question on that phase.

By Mr. BURCHMORE:

Q. Do you know of any reason, Mr. Sheppard, from your experience with conditions on the railroad, up and down the railroad—do you know of any reason why the Illinois Central could not handle grain into the grain elevators at the east end of this plant, and the Wabash handle all coal into the coal plant at the west end of this plant, for instance?

A. I know of no reason why they couldn't do that.

Q. There would not be any two engines in the same part of the plant?

A. No.

Q. Nor any confusion about doing that?

A. I would not know of any; no.

Q. Do you know, as a matter of fact, whether the amount of grain that the Illinois Central brings into this plant is very much greater at times than the amount of any other railroad?

A. I would say so from the territory we serve; yes.

Mr. BURCHMORE. Now, from 1939, just to illustrate, Mr. Commissioner, in 1939 my figures here show 3509 cars of corn into this plant by the Illinois Central, out of a total of 7308—over half.

Com. PATTERSON. Well, it might so happen that the Illi-
356 nois Central could make delivery without interruption or interference, while it also might easily happen that the

Wabash could not do it. In that case the Wabash might be prevented from lifting the charge and the Illinois Central might be—the charge might be lifted so far as the Illinois Central is concerned.

Mr. BURCHMORE. Well, let me ask: Let's be practical about this.

Com. PATTERSON. Well, I am trying to be.

Mr. BURCHMORE. What effect would that be on railroads and what would be the effect on us? Now, I suggest this situation: Suppose that the Illinois Central and the Wabash, both of them, if you please, were each able to handle, one all the grain and the other all the miscellaneous freight, and there would be no trouble at all; but then, if the Baltimore & Ohio wanted to come in, too, there would be three of them and that would create some interruption between the three railroads. Do you think we ought to keep the Baltimore & Ohio out and just tell them to stay away from here, because——

Com. PATTERSON. No; if the Baltimore & Ohio was so——

Mr. BURCHMORE. Or let them come in?

Com. PATTERSON. No; if the Baltimore & Ohio was so situated that they had to absorb some terminal charge, I presume they would have to absorb it, if they got the benefit.

Mr. BURCHMORE. Yes.

Com. PATTERSON. And that would likewise be true in re-
357 spect to any other lines. But, if the lines were so favorably situated that he could put his car into the plant without interference or interruption of any kind, he would not have to absorb any line haul charge.

Mr. BURCHMORE. Well, may we be permitted to take this position for Staley: We want to hear all there is to be said, can't we take the position, if we feel that our plant can be handled at the carriers' ordinary convenience, that we would like the carriers, considering the interest of labor, considering their own interest, considering the best methods, to handle our traffic in the way that is most economic and most efficient, and simply give us the Decatur rates and work it out among themselves cooperatively and to the advantage of all shippers here. Because, if we were to so handle our traffic in and out of this plant, we could very readily create congestion in the Decatur terminals or any one of these railroads that would be very bad for the rest of the industries in Decatur. The Illinois Central——

By Mr. BURCHMORE:

Q. You have to consider serving everybody at Decatur, I suppose?

A. Yes, sir; absolutely.

Q. And the method you handle our traffic must be a method that will not interfere with your efficient handling of the traffic of those other patrons here.

A. Yes. If we have the privilege of serving the plant
358 and serving the other plants, we will see that all get the proper service, and I consider that what you are talking about is a railroad problem rather than an industry problem. If the I. C. and the Wabash and the B. & O. all get into this plant and they can't serve it as they should serve it, conveniently and satisfactorily and economically to themselves, and satisfactorily to the shippers, why, it is up to them to work it out and it isn't due to any plant disability so far as I am advised.

Q. Do you think they could work it out?

A. I think they can work it out if they encounter any problems that make it not economical or inefficient.

By Com. PATTERSON:

Q. Well, you feel, then, so far as the Illinois Central is concerned, that if they pulled the spikes out of this spiked switch up there, you could make delivery without absorbing any line haul cost?

A. Yes, sir; and we absorbed $50,000.00 last year, and that is an awful lot of anybody's money.

Com. PATTERSON. I think so, too, so we have got the Illinois Central set-up.

Mr. BURCHMORE. That is all.

Mr. LOVERING. Just a moment, I have one or two questions I want to ask.

By Mr. LOVERING:

Q. You stated that it is your duty to include in the determining of rates the subsequent placing for loading and unloading
359 at the railroad company's convenience. I assume from that that if there were any interference in any industry, that your determination of the rate would take that into consideration, is that correct?

A. Yes, it would take it into consideration, but I don't think that I would make an allowance except in exceptional cases where there were instances of that kind. In fact, there are some industries that won't let us come into their plant and we make no distinction there because the difference is relatively small and we consider it our obligation to place the car and would go in there and place it if they would let us come in and place it.

By Com. PATTERSON:

Q. As a matter of fact, now, this Staley Company is one of those industries, isn't it?

A. One of what industries?

Q. One of the industries that won't permit you to come into their plant?

A. Oh, yes; they will permit us to come in there. That is the reason I want to fix this tariff. They will permit us to come in there if I get this tariff fixed.

Mr. BURCHMORE. Oh, no, that is not the condition. We asked the railroads to designate the manner in which they thought this plant could be most efficiently served for all.

Com. PATTERSON I was under the impression that the Staley Company had written all of the railroads except the Wabash Railroad that after a certain date they were to get out of the
360 plant and the cars would all be delivered by the Wabash Railroad. That was the impression I got.

Mr. BURCHMORE. I don't recall anything of that kind. We notified the railroads that we required no movements of any particular manner at any particular time, and would they please arrange a method of handling this plant at their own convenience and at their own terms, and so forth.

The WITNESS. That is right.

Mr. BURCHMORE. Which they did, and they nominated—not we, we had nothing to do with it—they nominated the Wabash Railroad to do the work.

Com. PATTERSON. You sort of executed that agreement, didn't you?

Mr. BURCHMORE. No, sir; not at all.

Com. PATTERSON. Well, the record will show whatever it is.

Mr. BURCHMORE. Yes, but not that. And then, Mr. Commissioner, there were changes worked out and suggested from time to time by the railroads and communicated to us, and, according to my instructions, my advices, each one of those suggestions from the railway operating departments we have complied with to attempt to simplify this. This wasn't a change overnight, it has been worked out to improve conditions, and we think there were some little difficulties at first about making it as quick and as easy as possible. It has been simplified from
361 time to time. We took up three or four miles of track, too, that came out in the last year.

Com. PATTERSON. Is there any other cross-examination?

By Mr. LOVERING:

Q. Well, Mr. Sheppard, in case there were any operation of a plant, or the requirements of a plant, which interfered in any way with the placing of cars at the convenience of the railroad, that fact will also be taken into consideration in determining the rate, am I correct in that?

A. Yes, that is true, and, Mr. Lovering, I would like to go a little bit further than that. If there would be an interference on one railroad and not on another railroad, then the competitive situation that would be set up would be such that you couldn't reflect in the rate the disadvantage of one line as compared with the other. In other words, what I am talking about is that if there was an interference on one railroad and not an interference on the other railroad, you couldn't make your rate against the railroad that was at a disadvantage, because you would have a competitive set-up whereby the other railroad would have to come in on a competitive basis.

Q. Where you have a situation of that kind—well, take the Staley plant right here, and assume for the purpose of discussion that there is an interference in the west end of it and no interference in the east end of it, and if the I. C. handled the traffic at the east end and some other railroad at the west end,
362 then it would be up to the railroad having traffic at the west end to take care of that interference in its charges so that the charge would be the same. In other words, the difficulty would be included in the line rate, is that right?

A. No, I don't think in that case you would reflect anything in there for the disability of the line that was at a disadvantage.

Q. That is what I mean, it would not show up, it would be the same rate.

A. It would be the same rate because of the competitive elements; yes, sir.

Q. In case there were any interference, in determining that line haul rate would you limit the application of the line haul rate to the point of interference or would you have the line haul rate high enough, in case there were no competition, to take care of the interference cost?

A. Well, I don't know that I have been confronted with a situation of that kind, but, if I were confornted with a situation of that kind, I believe I would make a separation, or undertake to make a separation. In other words, our deliveries would include certain plants. Now, if there was an interference, I think I would try to make a separation of the two so that if that interference was removed, why, the rate would apply to the point where it should have applied without the interference.

363 Q. Once more on this question of interference, Mr. Sheppard, and I think I am through with that phase of it. If a certain thing should be determined by the Commission to be interference, would you feel it your duty, as the officer of the I. C. in charge of these matters, to apply that same idea to other situations on your railroad?

A. No, sir; I would not. I think each and every industry is a separate problem in and of itself and I certainly would not apply that as a general principle all over the railroad.

Q. In other words, your idea along that line is the same as that followed by the Commission in these 104 proceedings, of taking each case on its own merits?

A. That is exactly what I would do; yes, sir.

Q. Did the Illinois Central ever do any of the switching in the Staley plant? My impression is it has not.

A. Well, I was going to answer it in this way: We never actually performed the services in the Staley plant, to my knowledge. We did deliver our cars for over a period of years in the Burwell yard, and from there we paid the Staley Manufacturing Company to perform the service; but with our own engines I don't think we have ever done it, to my knowledge.

Q. This page 14 of Exhibit 17, I believe it is, I am not sure that I understood what you said about it. You said something about that having been prepared for the Commission or for the benefit of the Commission. You meant in connection with
364 this hearing, is that what you meant?

A. I don't think I referred to page 14. Wait just a minute.

Mr. LE FORGEE. Page 10.

The WITNESS. 10?

Mr. LE FORGEE. That is what I asked you about.

Mr. LOVERING. I beg your pardon, page 10.

The WITNESS. Yes; page 10. No, I did not prepare that for the Commission. I said this: That in my discussions informally with some of the Commission's staff, I rather gathered the impression that probably they did not think the first tariff that we filed was as specific as it might have been.

Mr. LOVERING. Yes.

The WITNESS. And, in order to make it very specific and more specific than we have done to any other industry, as far as I can recall right now, we consulted with the Staley Manufacturing Company to find out where each and every one of these commodities that they had handled would be placed or received, which confirmed what we had in our own office to a large extent; and we thought that if there was any question about our tariff being clear, that maybe this would be better than what we had filed with the Commission although my own personal opinion is that the first rule we filed is as specific and as definite as this. In other words, it is all inclusive. I think that probably would be better. But we wanted to make it entirely clear
365 and if that was what was holding it up so far as the Com-

mission was concerned we wanted the privilege of filing this kind of a tariff.

Com. PATTERSON. Well, up to the present time the Commission hasn't found this one any better than the first one have they?

The WITNESS. Well, I am just putting it before the Commission right now.

Com. PATTERSON. This hasn't been filed yet?

The WITNESS. No, sir; it has not.

By Mr. LOVERING:

Q. The point I was interested in there, Mr. Sheppard, was whether or not anyone in the Commission had asked for it?

A. No, sir; absolutely not.

Q. I wasn't quite sure what you said when you made the statement.

A. I will be very positive on that, that the Commission hasn't asked for it.

Q. Did anyone else ask for it?

A. No, sir.

Q. Is it intended in any way to be used as a guide by the operating department?

A. No I don't think they need it as a guide because the billing shows generally where the cars are to go to and where they are to come from.

Q. Well, can you say positively either one way or the other?

366 A. Positively which way? What do you mean?

Q. As to whether or not this is intended also as a guide for the operating department?

A. We did not so intend it, no.

By Com. PATTERSON:

Q. Well the operating department would observe it, wouldn't they?

A. Oh yes; they will observe it sure.

Mr. BURCHMORE: That is what would happen; whether you had that or whether you did not, it would not change the movement of the car a particle.

A. If this is put in the tariff, Mr. Commissioner, the operating department will have to observe it, there is no question about it, but we did not have that in mind when we issued the tariff, and, as Mr. Burchmore very aptly said, this is what will happen regardless of whether it is in the tariff or not.

By Com. PATTERSON:

Q. Is it your understanding that this represents the present practice?

A. Yes, sir.

By Mr. LOVERING:

Q. Mr. Sheppard, will it be necessary, in case the Staley Company change the building number or change the particular building to which any of these commodities are handled, for you to get out a supplemental sheet on this tariff?

A. Oh, yes; we would if we issued it in this form, yes, sir.

Q. You spoke about—if I am not right on this, Mr.
367 Sheppard, I wish you would please correct me— you spoke about having no place else where you have any spotting charges. Am I right on that?

A. I don't recall any place where we have a spotting charge.

Q. I just want to ask you one question there. Has the Commission ever made an investigation of any of those places on your system other than the one right here?

Com. PATTERSON. I think one witness said they had not.

Mr. BURCHMORE. No, he said he did not know of it. Now, Mr. Commissioner, I want to call your attention and Mr. Lovering's to this circumstance: That in the trial of Ex Parte 104, Part II, in 1931 and 1932, the presiding examiner, Director Bartel, repeatedly stated that the Commission had no thought of a spotting charge—that is Item 1 and Item 2—that the Commission did take testimony with regard to several hundred industries on the Illinois Central Railroad, and, Mr. Sheppard, you know, don't you, that a great many industries on the Illinois Central Railroad were inquired into.

The WITNESS. My recollection, and I participated in that case, is that the investigation ran to the industries that were getting allowances and not to other industries.

By Mr. BURCHMORE:

Q. That is right, but didn't you give a long list of industries where you performed service and without charging additional freight rates?

A. I don't recall that Mr. Burchmore.

368 Mr. BURCHMORE. Well, we can bring that out in the argument. We did.

Com. PATTERSON. One witness, as I remember it, Witness Haynes, was it, this morning?

Mr. BURCHMORE. Yes.

Com. PATTERSON. In response to a question from me, said that the Interstate Commerce Commission had made no investigation of the industries getting spotting service along his line that he enumerated. That was my impression, that he said the Commission had made no investigation.

Mr. BURCHMORE. I think you are right, sir; that is what he said; but may I ask you, what is the effect of that if we name some that we did?

Com. PATTERSON. Well, it was his testimony, that as far as he knew they had not made any.

Mr. BURCHMORE. I think there are gentlemen here in the room who testified—I am sure there are witnesses here in the room that I can ask regarding particular plans concerning which they did testify and where there were no allowances.

Com. PATTERSON. I don't think it is important either one way or the other.

Mr. BURCHMORE. But it was announced that the Commission was not considering the establishment of a spotting charge. Now why, nine years later, should it be important to ask whether you went into a spotting charge in some hearing in 1931?

Com. PATTERSON. Well, I think the situation is no differ-
369 ent now than it was then, so far as the spotting charge in itself is concerned.

Mr. BURCHMORE. I agree with you, except that nine years more have passed without one.

Com. PATTERSON. Yes. The situation here seems to be with respect to the service necessary in order to do the spotting. Now, if it develops in this case or in other cases that the Commission might investigate that there is undue interruption or interference in spotting the cars at their unloading points, that that is what—that is the purpose of this hearing, to determine whether or not such is the case.

Mr. BURCHMORE. Yes, sir.

Com. PATTERSON. Now, if it develops that there is no undue interference or interruption in the spotting of these cars in the Staley plant, why, there won't be anything to talk about, as I understand it.

Mr. BURCHMORE. Well, there are so many lawyers here, it is hard to say there will be nothing to talk about.

Com. PATTERSON. Well, there won't be anything for the Commission to talk about. Is that all, Mr. Lovering?

By Mr. LOVERING:

Q. Just one more question, Mr. Sheppard. It is a rather obvious question and a rather obvious answer. Do your rates, as established by you, provide for more than one placement of a car?

A. Generally they do not. Our rates include one place-
370 ment of the cars and if—after it is placed either on the industrial or team track, if there is a subsequent movement, the interterminal or intraterminal or intraplant switching rates apply.

Q. I believe you stated, then, to go back to this prior question for a moment, that you did not recall of any situation where the Commission had made an investigation on your lines. Then, of course, you naturally would not have any idea what position the Commission might take until it did make that investigation?

A. No, I haven't any idea what the Commission might do.

Q. Have you had any operating experience?

A. Well, the first seven years with the railroad, which has been a long time ago, was in the operating department; yes.

Q. Not in the past twenty-five years?

A. No, sir.

Mr. LOVERING. Nothing else?

Com. PATTERSON. Any other questions?

Mr. SMITH. I am through, Mr. Examiner. I think the Illinois Terminal goes next.

(Witness excused.)

Com. PATTERSON. All right, we will take a five-minute recess.

(After recess.)

Mr. BUTLER. Mr. Powell, please.

Mr. LOVERING. Mr. Commissioner, before proceeding I
371 just want to state that Mr. Dyche, of the Pennsylvania Railroad Company, has a witness here who would like to be able to leave this afternoon, and, if arrangements can be made for him to testify before he leaves it will be appreciated. His testimony will take perhaps five or six minutes.

Com. PATTERSON. Is there any objection?

(No response.)

How long will it take this witness?

Mr. POWELL. It won't take me over fifteen or twenty. What time does he want to get off?

Mr. LOVERING. I understand any time this afternoon.

Mr. DYCHE. Any time this afternoon will be satisfactory.

Com. PATTERSON. We will put him on.

H. G. POWELL was sworn and testified as follows:

Direct examination by Mr. BUTLER:

Q. Give your name and address?

A. H. G. Powell, St. Louis, Missouri.

Q. Your position with the Illinois Terminal?

A. Vice president in charge of traffic.

Q. How long have you held that position with the Illinois Terminal?

A. I have held that position since 1933, but I have been in charge of traffic for the Illinois Terminal since 1921.

Q. And with what company were you associated prior to that time?

372 A. With the Illinois Central Railroad.

Q. What are your duties, Mr. Powell, as vice president in charge of traffic?

A. The development and general supervision of traffic for the company.

Q. Mr. Powell, have you prepared or caused to be prepared under your supervision and direction certain exhibits bearing upon the matters here under consideration?

A. I have. I have got four and I would like to present them at this time. The first—two copies there—is a map of the coordinated terminal; the second is the——

Mr. LE FORGEE. Mr. Commissioner, I think those ought to be examined. I think it is Exhibit 18, isn't it?

Com. PATTERSON. 18 is the first one.

(Copies of exhibit referred to, distributed.)

Mr. BURCHMORE. We haven't any over here.

The WITNESS. We will have some distributed around to you.

Mr. BURCHMORE. I think we ought to be taken care of before the general public.

Exam. WEAVER. This exhibit is in the record, isn't it?

The WITNESS. Not to my knowledge. Now, if it has been put in before——

Com. PATTERSON. This looks like Exhibit 15.

Mr. BURCHMORE. I thing it is; it looks like it.

The WITNESS. That was put in, then, in the previous

373 hearing by somebody.

Exam. WEAVER. You put it in.

Mr. BURCHMORE. You put it in.

The WITNESS. Oh, yes, in the Chicago hearing.

Com. PATTERSON. That is your file 300.

The WITNESS. All right, then that can be called Exhibit 15. I just want to talk about that before we get through. The second exhibit is a general map of the coordinated terminals, which shows the same as Exhibit 15, with the addition of our connection with the Wabash where we now deliver traffic for the Staley Manufacturing Company.

Mr. LE FORGEE. May that be identified by number.

Com. PATTERSON. It will be identified as No. 18.

(Exhibit 18, Witness Powell, marked for identification.)

The WITNESS. The next exhibit that I want to offer is the form of tariff that we offered to present to the Interstate Commerce Commission, covering the switching service at the Staley plant at Decatur, and corresponds to page 10 of the Exhibit 17 presented by

the Illinois Central Railroad; this being our tariff, page 10 is their tariff.

Com. PATTERSON. That will be identified as No. 19.

(Exhibit 19, Witness Powell, marked for identification.)

The WITNESS. The next exhibit is one of four pages, showing the present cost of switching at the Staley plant to the Illinois Terminal Railroad by the Wabash Railroad, and pages 2 and 3 showing the cost under the old arrangement used in the coordinated terminals of the Illinois Central, Illinois Terminal, and the Pennsylvania Railroad, and the coordinated switching service of the Wabash within the plant.

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Com. PATTERSON. That will be identified as Exhibit 20.

(Exhibit 20, Witness Powell, marked for identification.)

The WITNESS. In speaking of these exhibits, first on Exhibit 15 at circle 1 is the joint yards of the Pennsylvania and the Illinois Central Railroads, which they have occupied jointly for a great many years. "B" is the present connection of the Illinois Terminal-Pennsylvania coordinated service with the Illinois Terminal main line. Circle 2 is the yards where we place our cars for the Staley Manufacturing Company. The track "B", "C", "D" and "E" is the main line of the Illinois Terminal going around Decatur. The distance from "B", the Illinois Terminal-Pennsylvania connection with the Illinois Terminal, to "E" is 2.15 miles.

From "E" to "F", a distance of 2,180 feet, is the joint track constructed by the Illinois Central, the Illinois Terminal, and the Pennsylvania Railroads to get into the Staley plant. Circle 3 is the track owned by the Staley Manufacturing Company over which we reach their plant. In 1929 there was considerable talk in Decatur of industrial development, and, of course, the railroads were much interested therein. The Shellabarger plant was conceived and located about midway between "E" and "F", where you see some town lots marked off and white markings.

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Mr. LE FORGEE. Is that the plant which has been referred to more recently as Spencer Kellogg?

The WITNESS. It is. The Illinois Terminal, of course, would come off of their main line and reach this track, but at the same time there was the construction of a subway under the Wabash main line, of what was known as Brush College Road, and this offered an opportunity for other railroads than the Wabash to reach the Staley plant. It was a rather expensive construction, but by reason of the Illinois Central, Pennsylvania, and Illinois Terminal agreeing to jointly construct this 2,180 feet and pay a portion of the subway, the highway commissioner of Decatur Township agreed that they would also pay $50,000.00 towards the

construction of that subway. This track "E" to "F", 2,180 feet, was constructed jointly by the Illinois Central, the Illinois Terminal, and the Pennsylvania at a total cost of a little over $200,000.00, as testified to by Mr. Miles. Our proportion of that was about $65,000.00, I believe.

The judgment of the railroads as to this industrial development, I think, has been borne out fully by the fact that this year the Spencer Kellogg Company took over the Shellabarger soybean processing plant, which was served by this joint track, and are putting in something like over one million dollars in additions thereto,

and north of this track has been constructed the Archer-
376 Daniels-Midland Company, and investment of several million dollars, possibly four to six million dollars. That explains in detail the how and the why under which the Illinois Central, the Illinois Terminal, and the Pennsylvania reached the Staley plant and the industrial development which is now the Spencer Kellogg Company. The cars handled over this coordination of terminals was prorated among the three lines in interest, based upon the actual cost of switching, divided by the number of cars, and then each line assessed for the total number of cars, both loaded and empty, which were handled during each month.

Now, as to Exhibit 18, I didn't know whether the Commission had a large map of these terminal facilities or not and I wanted to introduce this to be sure that you did have. This covers practically the same description carried in my Exhibit 15, with this addition: That the "A" is where we today deliver our cars for the Staley Manufacturing Company to the Wabash Railway, absorbing their switching therefrom based upon 14 cents per ton, minimum 2.97 and maximum 4.95 a car.

Mr. LE FORGEE. Perhaps it would assist a little if the witness would indicate what the red line on the map represents.

The WITNESS. The red line represents the Illinois Terminal tracks extending east from "A" to where the turn is made on Van Dyke Avenue going north to McKinley Avenue; then continuing

north to "C," west, I guess it is, down past our yards, and
377 thence east to where we come to the green line, which is the 2,180 feet constructed jointly by the three railroads to get into the Staley plant at the time of the construction of the Brush College Road subway.

By Mr. LE FORGEE:

Q. And what is the red line—pardon me for interrupting— what is the red line from the intersection of the green line eastward until it goes off——

A. That is our main line headed towards Champaign and Danville. On this map, "B" is the Illinois Terminal-Pennsylvania

joint yards; "C" is the interchange of those two roads with the Illinois Terminal; "D" is where we enter the Staley yards, and "E" is the Wabash entrance, east entrance, to the Staley yards, and "F" is the west entrance to the Staley yards. Exhibit 19, as I stated, corresponds with page 10 of Exhibit 17 introduced by the Illinois Central Railroad, and is the proposed supplement as it would be made to our tariff 194-L, covering the individual deliveries at which the loads will be placed and the individual points from which the loads would be taken. This corresponds exactly with page 10 of the I. C. Exhibit 17, and page 11 of that exhibit shows these location' on the map.

Exhibit 20, four pages, is to show the cost to the Illinois Terminal at the present time and under the other arrangement that we had prior to this—prior to that for placing cars in the Staley plant. Page 1, of this exhibit, I took the month' of October, November and December, the total number of delivered and received
378 cars, both State and interstate showing the amount of switching and the average per loaded car during this period, which was $4.65½ cents per car.

Now, this is a few cents different from the cost put in by the Illinois Central and is easily explained by stating that most of the coal came in off of the Illinois Terminal Railroad and were heavily loaded cars and took the maximum of 5.45 a car, so it would naturally bring our cost a trifle higher than the Illinois Central, which was grain and miscellaneous commodities.

Page 2 of this exhibit covers the cost for one year from July 1, 1936, to June 30, 1937, during the time the Illinois Central were taking the cars of the Pennsylvania, Illinois Central, and the Illinois Terminal over our coordinated terminals into the plant, and those cars in the plant were then being switched to the various points of delivery and forwarding by the Wabash railroad. This is the total cost of the coordinated engine of the Wabash Railroad, an average for that year of 2.90\frac{9}{10}$ cents per car. Page 3 is the charge during the same period of the coordinated service of the Illinois Central, Pennsylvania, and the Illinois Terminal over our joint tracks, as shown in Exhibit 15. This was figured on the actual operating costs of both the loaded and the empty cars and shows an average to the Illinois Terminal of 82½ cents per car, which also is a trifle higher than the figures produced by the Illinois Central for the period that they showed and this is explained by this fact; we were handling the coal business for
379 the Staley Manufacturing Company at that time, which meant that for every car of coal going in there must be an empty car coming out, while on grain cars going in loaded with grain, very frequently they came out loaded with materials manu-

factured, such as starch, and so forth, at the plant. So that will explain the slight difference of a cent or two between our figures.

And page 4 is a recapitulation showing the various charges and the cost, showing that at the present time it is costing the Illinois Central $4.65½ cents per car, after which the Staley Company pays $2.50 to have the car placed, while during the time that we took our cars in under the coordinated service of the I. C., Pennsylvania, and ourselves and had the Wabash place them in the plant, it made a total charge of $3.73 1/10 per car, and during the period when we were paying the Staley Manufacturing Company, a practice that is now out of the window and no chance of coming back, it was costing us $2.65½ per car, or $2.00 less than our charges today.

Now, I believe that that is all I have to offer on this.

By Mr. BUTLER:

Q. Mr. Powell, one question. Are there any industries located on the line or lines of the Illinois Terminal Railroad Company on which we make a charge similar to the charge here under consideration, for the service of spotting cars within the various locations of the plant layout?

380 A. There is not.

Q. And are you familiar with the various plant layouts of the industries located upon our lines?

A. I am in a general way.

Q. And are any of those industrial plant layouts similar to the plant layout of the Staley Company in complexity and size?

A. Very much the same.

Mr. LOVERING. Mr. Commissioner, I don't know whether we want to go into the question of similarity of layouts. That is apt to be a rather complicated subject.

Mr. LE FORGEE. It is a question about which he may be cross examined. He is simply stating the fact.

Com. PATTERSON. Well, that is his judgment, that they are similar in complexity. We can go into that if it seems necessary.

Mr. BUTLER (to the Reporter). Will you read the question?

(Question and answer read.)

By Mr. BUTLER:

Q. Can you name any of those industries where the layouts are naturally similar?

A. They would be the Clede Steel Company at Granite City, the Shell Petroleum—the Shell Oil Company, it is, at Roxana, the Alton Boxboard & Paper Company at Alton; various ones at other points.

Mr. BUTLER. That is all.

By Com. PATTERSON:

381 Q. Have any of these situations been investigated by the Interstate Commerce Commission?

A. It seems to me that they were, that the Shell Petroleum Corporation, in the handling of cars—there were no plant allowances there—it seems to me that the Owens Illinois Glass Company, it was gone into.

Q. Will you put evidence of that in the record?

A. If I am correct, now, I am not sure but it seems to me that there were. Now, I am not sure about that.

Mr. BURCHMORE. We can refer to the record page on the Clede Steel Company, examined in the 1931 hearings, and I think, Mr. Powell, you testified in the 1932 hearings, did you not?

The WITNESS. Some of them, yes.

By Exam. WEAVER:

Q. Did the Commission put out a supplemental report dealing with those situations?

A. No.

Mr. BURCHMORE. Mr. Commissioner, you may not know it but the proposed report that Director Bartel served, that preceded the decision in Volume 211, dealt with something like 200 industries, as I recall, and I think only 57 or 58 supplemental reports had been issued; but besides that 200 more or less industries you will find that the Commission's decision refers to the fact that they went into a very large number—I think they give the number—they went into it, and, if I may remind Mr. Powell, I think he was there when testimony was given regarding the refineries at Wood River and the refinery at Roxana.

382 The WITNESS. I was.

By Mr. BURCHMORE:

Q. And who was the traffic man of the Clede Steel Company?

A. Robert McKee.

Q. Robert McKee testified with regard to his plant, which receives no allowance, does it?

A. No.

Q. And there was testimony with regard to a concern or two at Alton?

A. Yes.

Mr. BURCHMORE. That was, however, on the presiding officer's announcement that you were not considering the establishment of a spotting charge.

Com. PATTERSON. Yes; I think that situation is still true. I was interested to know whether an investigation had been made

on the ground by an organization of the Commission or whether the investigation was made through a hearing such as this.

The WITNESS. Mr. Burchmore, didn't they take hearings in Chicago on those firms that I mentioned?

Mr. BURCHMORE. Yes, in Chicago.

The WITNESS. I sat in there but wasn't a witness at that time.

Mr. BURCHMORE. In connection with some of the examinations at that time the Examiner had before him reports of the Bureau of Service Investigators who had been through some
383 of the plants and investigated and they read from their notes.

Com. PATTERSON. We can check that.

Cross-examination by Mr. LOVERING:

Q. Well, Mr. Powell, you spoke about those other plants in your line being similar to the Staley plant. Will you please tell a little more specifically in what way are they similar?

A. Why, they have tracks leading into the plants, one track going to an unloading platform for a certain commodity, and another track to another platform for another commodity. They have got side tracks leading into warehouses where they load one class of material and another warehouse for another class of material, is about the best I can describe it.

Q. Are you an operating man?

A. No, sir.

Q. Are you acquainted with the switching which takes place within those plants?

A. Do I what?

Q. I will withdraw the question. What is the largest one of those industries of which you speak, how many cars do they handle in the course of a year's time?

A. Well, you take the oil refineries, we have two of them, they have run as much as 60,000 cars apiece a year. Now they are probably running in the neighborhood of 30,000. I speak of the two because I don't want to differentiate and——

384 Q. Were those two among those that were investigated by the Commission?

A. They were.

Q. Do you know how many miles of track they have within the plants?

A. One of them I know—no; I couldn't say because the one I have reference to did have 13 miles, but I think they have abandoned a portion of that, but the—I think I would be safe in saying that they each have not less than 10 miles of track within their plant.

Q. How many loading locations?

A. Well, they will have a rack for loading gasoline, another for loading ethyl, another for loading fuel oil, another for loading road oil, another for loading asphalt, another for loading paraffin, another for loading coke.

By Mr. BURCHMORE:

Q. Barrels?

A. Unloading barrels. I think that is about the number of commodities. I may have missed one or two.

By Mr. LOVERING:

Q. How are they on miscellaneous commodities, do they have very many miscellaneous commodities at miscellaneous unloading points?

A. Yes; they do. They have pipes and fittings for repairs, hardware in general. They will have racks where they sometimes unload crude oil, coal, barrels—did I say barrels? Boxes, cans, and various miscellaneous commodities.

385 Q. What are the inbound raw materials?

A. Crude oil and coal, fuller's earth.

Q. Two commodities?

A. And sulphuric acid, I guess it is.

Q. Is all oil brought in in tank cars or pipe lines?

A. No; most of it comes in by pipe line. When a new field is opened and until pipe-line facilities are provided there have been for a short time a few tank cars of crude. I have seen as much as 15 cars a month of crude. But as soon as the pipe line is completed they dispense with the rails.

Q. I take it from what you say that the normal movement of traffic in empties is in loads outbound?

A. Yes; although there is quite a bit of coal goes in for fuel purposes.

Q. When you bring in crude oil what do you do in connection with placing that car?

A. We have to place it in the crude oil yard, where they have racks for unloading.

Q. Of what does that movement consist?

A. What is that?

Q. Of what does that movement consist?

A. Crude oil.

Q. No; I mean what is the nature of the physical movement?

A. Oh, we bring the car in and spot it to the unloading racks.

386 Q. Is it a straight movement right through from the switch where you bring it in the plant until you put it at the unloading rack?

A. No; not in all cases. We might come in with that engine if we had some coal, might have some fuller's earth, sulphuric acid, crude oil. Now, ordinarily a switch crew would switch that out in the yards first and get it in the order in which it came in so they could make the first spotting, and the balance of the train would be dropped there and the coal maybe would be shoved in, then the balance of the train would be backed up, maybe the crude oil would be the next, so that would be shoved in and the train stopped and then go on to the sulphuric acid and finally to the fuller's earth.

Q. Where does that classification take place, in the railroad yard or in——

A. It should take place in the railroad yard so as not to congest, but I think there are times when they do a little classifying in the yards of the plant.

Q. As I understand it, they take all these commodities from that classification point in one train?

A. Yes, sir. Now, let me explain as to that. I say they do, but it might be that fuller's earth comes in from one direction, over one road, via one junction, where they deliver to us, coal would come over another road through another junction and delivered to us, and the crude oil comes still yet over a third road through another junction for delivery to us, and they might
387 not all be brought in on the same train; one train from the east might bring in some of it, one train from the west might bring in some of it, one of our trains from the south might bring in some of it.

Mr. BURCHMORE. That wasn't the question, I don't think.

The WITNESS. I thought it was.

By Mr. LOVERING:

Q. My question, Mr. Powell, has to do with after you get these cars classified?

A. Yes.

Q. As I understand it, you classify all of one commodity in one class?

A. Yes.

Q. So that when the train is made up and going through the plant, all the cars of one commodity are together?

A. Yes, sir.

Q. Then you drop off each particular commodity at its proper location?

A. Yes, sir.

Q. Is that right?

A. That is the general run of it, yes.

Q. Do you do any weighing of those inbound commodities?

A. Sometimes they do. The coal they buy on destination weights; the crude oil is taken on an estimated weight.

Q. How many times do you load—do you spot cars at one of those unloading points? I will repeat that question so it
388 will be clear. How many times do you spot cars at one of those unloading points in one shift of the switch crew?

A. Wait a minute, you have got me puzzled a little bit yet.

By Com. PATTERSON:

Q. He means how many trips do you make at the same siding during this one shift. I assume that is what he means.

Mr. LOVERING. That is correct.

The WITNESS. That would not always be the same. It would vary according to the deliveries to us. As I say, this stuff might come to us—we get some in the morning, we would have some more in the afternoon, and if they wanted the afternoon deliveries placed so they could unload, then we would probably go twice.

By Com. PATTERSON:

Q. You bring it over there when they want it?

A. When it came in.

Q. Oh, when it came in.

A. Of course, if they were not in a hurry for that certain delivery, we might let it lay until the next morning and go in with the other run. However, if they said they wanted it and we had it in in the afternoon, we would be duty-bound to place it.

By Mr. LOVERING:

Q. Who controls the tracks at that location, the industry or the railroad?

A. The industry controls the track.

389 Q. Controls the maintenance?

A. Yes, sir.

Q. Mr. Powell, when these cars come in for this industry, how do you know where to place them?

Mr. BURCHMORE. Which industry do you mean, Staley or the other one?

Mr. LOVERING. No, the one he is talking about.

By Mr. LOVERING:

Q. When those cars come in, how do you know where to place them?

A. We don't except in a general way. We know that crude oil is unloaded on one track, sulphuric acid at another, fuller's earth at another warehouse, and the cans one place, the drums at another; but we would naturally call up the industry—they have a man in charge—and say we have got this car of tin cans, this car

of drums, this car of fuller's earth, and he would tell us where to put them.

Q. Is that done after the car has arrived at this station, this tariff station?

A. Yes, sir.

Q. You notify this representative of the company in question?

A. Yes, sir,

Q. Is that as to all cars?

A. Yes, sir.

Q. On the outbound traffic, how is that handled? What arrangements do you have for getting your billing on the out-
390 bound traffic and getting the cars, knowing where to go for them?

A. Are you talking about this hypothetical industry?

Q. Yes; this industry you are speaking of. I assume it is a living industry.

A. It is. I have in my mind the Standard Oil there. We switch that plant for our line, The Alton Railroad, and the Big Four. The first thing we do when they saw off loading, as they call it, is to classify those loads by the Illinois Terminal, the Alton, or the Big Four. As soon as we have them separated, we take the Alton cars and the Big Four cars and run to North Wood River, putting them on the proper interchange track for each of those loads.

We then go back and switch our own cars in what we would call delivery order. Our first delivery would be to the Wabash Railway at Bluffs Junction. The next would be to the Nickel Plate at La Clair. Then our own cars going up our electric line from La Clair; then the Illinois Central cars at Mounds, Illinois, the Pennsylvania cars at Favette, Illinois, the Baltimore & Ohio cars at O'Fallon. That would be the order in which our train was made up, so that when we come to the interchange connection with each of those roads we would have their cars altogether.

Q. How do you know when the industry has the load ready to go out?

A. They notify us that they are ready to go, but ordi-
391 narily one of these industries has a specific hour they quit loading, which is four o'clock. In busy times one of the other refineries has loaded as late as three o'clock in the morning, cars coming to us in shifts. Maybe in two or three hours we would get 25 of 30 cars, and the same length of time that many more.

Q. They notify you and do they tell you where the car is when they notify you?

A. They tell us, yes.

Q. What service do you provide with power inside the industry?

A. We have our locomotives, sometimes one, sometimes two, and we are glad to put in three or four if they have got that much business.

Q. They stay in there all the time or do they just take some cars in and then come out again?

A. They will go into that plant in the morning, placing these cars and putting cars at racks to load out-bound and the empty box cars for loading out-bound. There may be some intraplant switching which is done, and a bill is rendered in the regular form. When they get through, if it is an hour or if it is in five hours, they would come out.

Q. Is that the Standard Oil situation?

A. I had them in mind as I was discussing this, they and the Shell Petroleum, Shell Oil Company.

Q. Has the Commission investigated that?

A. I think that was one they had a hearing on in Chicago.

392 Q. Have they reported on it?

A. No; that was one of those numerous ones that no specific supplemental order was issued.

Com. PATTERSON. Perhaps they did not make much of an investigation, probably took it from the record.

The WITNESS. No, there was no plant allowance there and they did not seem to go into it so much when they found such was not the case.

Mr. BURCHMORE. The Standard Oil had a witness there who answered all questions.

The WITNESS. Oh, yes.

Mr. BURCHMORE. I interrogated the witness, as a matter of fact, and we were informed by the presiding officer that they were not considering the establishment of a spotting charge, they were considering whether improper service was being performed.

Com. PATTERSON. Well, it might be well to re-examine some of those cases and find out just what they were doing.

Mr. BURCHMORE. Yes; that is true.

Mr. LOVERING. I have nothing else, Mr. Commissioner.

Com. PATTERSON. Anything else?

Mr. BURCHMORE. May I ask a question or two?

By Mr. BURCHMORE:

Q. One is, Mr. Powell, you from time to time as vice president of this road, receive complaints from your patrons, don't you?

393 A. Yes.

Q. And when complaints come in you consider them and act on them?

A. Correct.

Q. Now, have you had any complaints from any of the shippers that ship over your line, that you were doing something that wasn't satisfactory or that was improper or that was discriminatory as regards the terminal services you were rendering to these plants? Have you been accused of doing too much?

A. No, I don't remember of a complaint of that kind.

By Com. PATTERSON:

Q. You have never had any complaints that you were doing too much for them?

A. No, sir; nor too little, that I know of.

By Mr. BURCHMORE:

Q. Well, now, if the Commission has an idea that there is some horrid arrangement here, that some of these plants are getting a lot of service they should not get—and perhaps the division of service doesn't want any shipper to get any more service than the railroad can possibly get out of giving them—but if anybody thinks they are getting too much service, there has been no complaint made to you by any of their competitors?

A. Nobody.

Com. PATTERSON. There are a lot of them going broke, though, by giving too much service.

Mr. BURCHMORE. No; not from giving too much service.

394 By Mr. BURCHMORE:

Q. Have you noticed that the trucks along your lines won't go inside of the plant and get business?

(Laughter.)

A. What was that question?

Q. Well, I did not intend to be funny.

A. I did not get it.

Q. Have you noticed that the trucks in the territory you serve will not go into a plant and get business; they stand outside and make the plant bring the stuff out to them?

A. I haven't found any such cases as yet.

Com. PATTERSON. I think sometimes they bring it to the gate.

Mr. BURCHMORE. Roll the barrels out.

Com. PATTERSON. Yes.

By Mr. BURCHMORE:

Q. Well, now, is there anything in the manufacturing processes within these factories that you are speaking of that interferes and makes it inconvenient for the railroads, for the Illinois Terminal, to bring in and out cars?

A. No, sir.

Q. Are there any plant interferences?

A. No, sir.

By Mr. Le Forgee:

Q. Mr. Powell, you are a vice president of the Illinois Terminal, are you not?

A. Yes, sir.

Q. Is there any particular line of duty that is imposed
395 upon you to perform in such office?

A. The development of traffic and the general supervision of traffic and the securing of traffic.

Q. Your attention is directed pretty largely to that?

A. Yes, sir.

Q. And has been for how long?

A. Nineteen years at the Illinois Terminal.

Q. And in the discharge of your duties you have become quite familiar with the cities, towns, and villages along your right-of-way?

A. Yes, sir; it is my business to know them.

Q. Among which is Decatur, Illinois?

A. Yes, sir.

Q. And, of course, as you have indicated by reference to your plat, you are quite familiar with the direction and operation of your tracks in and through the City of Decatur and the various manufacturing industries they contact?

A. Yes, sir.

Q. Have you from time to time visited those industries and observed what the working conditions and the plant lay-out is with reference to trackage facilities?

A. Yes, sir.

Q. Have you done that with reference to the A. E. Staley Manufacturing Company?

A. Yes, sir.

396 Q. I wish you would be good enough to tell the Commission whether or not you have kept pretty well in touch with this controversy which has arisen with reference to this charge against the Staley Company over and above the line haul rate?

A. I have.

Q. Was that the inspiration for the preparation of these various exhibits which you have identified here?

A. Yes, sir.

Q. You may state whether or not that was with a view of advising yourself as to the propriety or impropriety of that $2.50 excess charge?

A. It was in connection with that. I always felt that that was an unjust charge.

Q. Yes. Now, as you made those examinations of the plant and the lines which were laid in through the plant of the Staley Com-

pany, did you make a study of determining the location of the Wabash Railway Company tracks?

A. Yes, sir.

Q. And its switching facilities?

A. Yes, sir.

Q. As well as the Baltimore & Ohio?

A. Yes, sir.

Q. The Illinois Central?

A. Yes, sir.

Q. And the Pennsylvania?

397 A. Yes, sir.

Q. And your own tracks?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, in the consideration of that question, did you also go into the plant construction at numerous other plants like the Standard Oil Company, at Roxana, and the various companies you came in contact with?

A. Yes, sir; particularly as to the track construction.

Q. Yes. You may state whether or not you found a similarity in track construction between the Staley Company and any of the plants about which you were interrogated by Mr. Lovering?

A. They were very similar.

Q. And how is the movement of the cars, as a matter of convenience from the tracks of an incoming carrier, as compared with the switch tracks in the industry?

Mr. LOVERING. Mr. Commissioner, I am wondering whether the witness is qualified to discuss the movement of the cars themselves. It seems to me he is not.

Mr. LE FORGEE. Well, he says he observed it. He saw it.

Mr. LOVERING. He can tell what he saw.

Mr. LE FORGEE. Well, I am asking him now, is it a result of what he did see.

The WITNESS. From what I saw, the movement and the

398 handling of cars at the Staley plant is very similar to that in every other large plant that I was ever inside of.

By Mr. LE FORGEE:

Q. You have described in some detail, Mr. Powell, in the questions propounded to you by counsel representing the opposition, so to speak, about your services. You may tell the Commission whether or not any of those services which were rendered by your company, with reference to the withdrawal of cars, the switching operations, the deliveries incident to the handling of those cars,

where such cars involved Interstate Commerce—whether or not any charge was ever made to that corporation in excess of the—over the line haul rate?

A. There was not, unless there was an intraplant switch before or after placing, which charge was made.

Q. That is to say, where there was a plant movement within the plant which was wholly intrastate, that unless there was some provision of the interstate law in relation to that matter, you made a charge?

A. Yes, sir.

Q. Now, as to those, the interstate movement of those cars, or those cars which were about to become involved in Interstate Commerce, did it involve, in the withdrawal of those cars from the track, from the plant, movements to various switch tracks and back on other tracks, and then a classification of kind, with the
399 ultimate removal at some miles distant from the place where the plant was?

A. Yes, sir.

Q. How long has that practice obtained, Mr. Powell?

A. I have only been in the railroad forty-seven years and I could not tell you because it dated back beyond that, I think.

Q. In other words, it is back to the time whereof the mind of man runneth not to the contrary?

A. Correct.

Q. Have you been in the Staley plant within the last year?

A. Yes, sir.

Q. You may state whether or not you have observed the movement of the cars into and out of that plant?

A. I have.

Q. And have you in like manner observed the method in which they have been handled by the railroad company which was doing the switching?

A. Yes; I watched the movement through the yards.

Q. I want to ask if it isn't true that upon every occasion you observed those movements, that the movements of those cars, the operation of the engines, the classification and all other things that were done, were not, so far as you observed, entirely within the dominion and control of the railroad employees, without the intervention or connection of the Staley employees in any way?

A. I saw nothing that would indicate any intervention by
400 the Staley employees.

Q. Did you see anything in the way of any interference by the Staley Company or any obstacles or obstructions in any way which delayed the movement of the cars in a manner which the railroad company desired to move them?

A. No, sir.

Q. I would ask you to state, Mr. Powell, whether or not in the examination you made, and your knowledge of the practice of railroad companies, the operation of a common carrier, in the sense of carrying a large amount of cars, merchandise for manufacturing plants—whether or not you regard this charge of $2.50 as unjust and discriminatory?

A. I never did feel that the charge should be there, and, under my interpretation of the first order, I thought that all it required was the ceasing and desisting in the payment of the plant allowance.

Q. And, as a matter of fact, when you learned, as in fact it did exist, that the Staley Company did cease and desist from operating a switch engine, and left that to the common carriers, you felt as a railroad man, under what you knew of the practice and the law, that it was the duty of the carriers to carry those cars in and spot them in the plant at the place indicated by the company?

A. Yes, sir.

Q. And that rule, in your judgment, holds good today?

401 A. Yes, sir.

Q. And do you know of any other place where Interstate Commerce cars are moved, where that rule isn't recognized and applied?

A. I do not know of any place.

Mr. LE FORGEE. That is all.

Mr. SMITH. I have just one question.

By Mr. SMITH:

Q. How do you handle cars to the Spencer Kellogg? Your company is performing that service today, is it not?

A. Our company is performing that service and we have an operating man here that can tell you the exact movement. We take them down the main line and in over the switch leading to that plant and spot them at the various locations within the plant where they should go.

Q. You are doing it for the other roads, are you not?

A. Yes, sir; for the Pennsylvania and the Illinois Central, under this coordinated service. The Wabash come in from the south end themselves, and, if the Baltimore & Ohio wanted, under the reciprocal switching, to have us place their cars, we could do that also.

Mr. SMITH. That is all.

By Mr. LOVERING:

Q. In response to one of Mr. Le Forgee's questions you spoke about being in the Staley plant making observation of the way the Wabash was handling the traffic. How many times were you in that plant for that purpose?

A. I think at two different times. Just recently I was in
402 there and we went up in what was called the tower, where I could see that.

Q. Is that in the office building?

A. In the office building, up in the top part, I think is what they call the tower, and I watched both the east and west ends up there.

Q. How long were you there?

A. Oh, thirty minutes, I think, each time.

Q. Please tell me what you could see from there in the way of the operation by the Wabash? What did you see?

A. Oh, the engine with the cars attached, saw them spot cars at various places, move on and spot another car at another place, what any such engine would do.

Q. What you would describe as normal switching operations?

A. Normal switching operations, yes, sir.

Q. You spoke about not seeing any intervention by the Staley employees. What kind of intervention would you expect to see?

A. I would not expect to see any intervention because the Staley employees are as anxious as the railroads to get that job done and get through with it.

By Com. PATTERSON:

Q. You sort of got a condensed picture in thirty minutes, didn't you?

Mr. BURCHMORE. I would like to suggest this for Mr. Lovering's benefit: Before the Supreme Court of the United States, in
403 one of these cases, counsel for the Commission said this to the Supreme Court: That the Commission had substantial evidence in the case, because, to an informed railroad man, who was expert and informed in such matters, it required but a momentary inspection of the tracks, a look at the lay-out, to know whether it was a plant that could be efficiently and economically operated without any difficulty, or whether it was one that couldn't.

Com PATTERSON. I think there is no——

Mr. BURCHMORE. I think Mr. Powell is expert and he did not have to stay there for about nine weeks, like a Commission inspector does, looking for cars where somebody found a hot box or something.

Com. PATTERSON. When the Commission inspector gets the evidence, he has it. It isn't thirty minute evidence.

Mr. BURCHMORE. That is right, but what is it evidence of?

Com. PATTERSON. Well, it is evidence of what happened.

Mr. BURCHMORE. That is right.

Com. PATTERSON. I think there is no question here as to the ability to do this—that there is no question here as to the physical lay-

out that would permit the prompt movement of these cars for delivery.

Mr. BURCHMORE. Yes.

Com. PATTERSON. But it is quite another question as to whether or not that is actually being done.

Mr. BURCHMORE. Well, I would like to know, since
404 I have asked again and again why the Commission reopened the case and I have asked Mr. Lovering what we ought to go into. I have asked what is suspected may be wrong here. We don't know of anything we are doing. Does Mr. Powell know of anything that the plant might be doing here that would amount to an infringement?

Com. PATTERSON. Well, he did not discover anything in thirty minutes.

Mr. LE FORGEE. Isn't there another element that enters into that? That is the fact that theye may be a very satisfactory lay-out, a very feasible set of tracks; the mere fact that there is stoppage, does that revert back to the approximate cause of the stoppage? Suppose it is inefficiency, suppose it is inability, suppose it arises from fifty different causes which are as broad as the horizon, over which no one has any control other than the mere fact that it was perhaps a useless, perfectly senseless operation of a car. That isn't an interference.

Com. PATTERSON. So far as that particular car is concerned it might be.

Mr. LE FORGEE. No; I mean, but if it results from a general course of practice.

Mr. BURCHMORE. It might be the plant's fault or it might be the railroad's fault.

Mr. LE FORGEE. That is the very point.

Com. PATTERSON. Or an interference or delay might be to
405 the convenience of either the plant or railroad.

Mr. LE FORGEE. Yes, if your Honor please, of course it might be; but at the same time it is just as humanly possible that where a company or manufacturing institution has done every possible thing to bring it up to the highest state of efficiency and at a certain point he loses control and jurisdiction over the operating of another property and of another institution that perhaps is not so efficiently operated and controlled and managed as the manufacturers' business, certainly the sins of that—the lack of efficiency or whatever it is can't be visited upon the head of someone else where everything has been done to make it efficient and proper.

By Mr. LOVERING:

Q. Mr. Powell, where is that plant located with respect to the main plant?

A. Where is what?

Q. Where is that tower located with respect to the main plant?

A. It is in the main office building, almost in the center, on top of the building.

By Mr. BURCHMORE:

Q. Almost in the center of the plant?

A. Yes.

By Mr. LOVERING:

Q. Where are the majority of the plant buildings located?

A. East and west of it.

Q. How many are west of it?

A. Well, it looks like it might be in the middle, about as many——

406 Q. Well, the blueprint, I believe, shows the location of the office building?

A. Yes; it shows the location, I think, of the office building.

Q. Do you know whether or not from that point you could see all the unloading tracks?

A. I think you can. I am pretty sure I looked at them all.

Q. Mr. Powell, in answer to some question you referred to the Commission's decision in this 55th Supplemental Report, and, if I remember right, you said something about at first glance thinking it referred only to the discontinuance of the switching allowance?

A. Yes, sir.

Q. If that switching allowance had been discontinued at that time, who would have stood the cost of the switching, who would have had to do it?

A. The railroads.

Q. And if Staley had kept on operating its own engine?

A. If Staley had kept on operating its own engine we would have had to discontinue the spotting charge and they would have had to do the work for nothing, under that order as I understand it.

Q. That was what your first understanding was of the Commission's order and report in the 55th Supplement?

A. Yes, sir.

Q. Do your line haul rates, Mr. Powell, contemplate the service provided under that line haul rate shall continue up

407 to a point of interruption, assuming that there be such a thing?

A. The line haul rates of our company, after we put them out, include the pick-up and delivery of carload freight at our industries. Now, I don't get just what you mean, unless we encounter some interference. For instance, if he says, put it around building No. 10, and there is no track there, we could not do it and we would not do it.

By Com. PATTERSON:

Q. You would put it anywhere there was a track?

A. Any place there was a track.

By Mr. LOVERING:

Q. But if there were—now, I am just assuming now in an endeavor to find out how you would apply your line haul rate?

A. Yes.

Q. And the service under it. If there should be a plant interference——

Mr. LE FORGEE. Just what do you mean by plant interference?

Mr. LOVERING. For instance, stopping a car for weighing service, not provided for in the tariff.

The WITNESS. Well, I think that that is provided for in the tariff.

Mr. LOVERING. No; in my assumed question I am assuming that it is not provided for.

The WITNESS. Well, we have got it provided for in our tariff, so I would not want to say what I would do, under a

407½ tariff that did not exist.

By Com. PATTERSON:

Q. Well, what would you do if it wasn't in the tariff and they asked you to stop it for some reason, for instance, weighing, what would you do?

A. Why, I would stop it and weigh it.

Q. Yes.

By Mr. LOVERING:

Q. Your line haul rate would not cover that service?

A. I would discuss that with them afterwards.

Mr. BURCHMORE. If the tariff did not provide for its placing, no; we will say that.

Mr. LOVERING. Nothing else.

Com. PATTERSON. Is that all? Any more cross-examination?

Mr. LE FORGEE. That is all, I guess.

(Witness excused.)

408 Com. PATTERSON. All right; now the Pennsylvania can put on their witness.

CARL RICHEY was sworn and testified as follows:

Direct examination by Mr. DYCHE:

Q. Your name and address, please.

A. Carl Richey.

Q. By whom are you employed?

A. The Pennsylvania Railroad.

Q. And in what department are you employed?

A. Supervisor of regional expenditures, Chicago.

Q. Does that department have jurisdiction over expenditures in and about Decatur?

A. In the handling of the accounting therefor, yes, sir.

Q. Have you made a memorandum showing the cost per loaded car during the years 1935 and 1936, to the Pennsylvania Railroad, of having in-bound and out-bound cars handled by Illinois Central power, the Illinois Central trackage, Illinois Terminal trackage, and the joint trackage of the Pennsylvania, Illinois Terminal, and Illinois Central, to and from the Staley track connection?

A. I have.

Q. Now, before you refer to those costs, I take it that your testimony is to be confined to that and will not include a description of the handling of the cars, nor will it refer to
409 the cost under the present reciprocal switching arrangement?

A. Correct.

Q. Would you take up the cost for the year 1935 for that service, on the average, per loaded car?

Mr. LE FORGEE. What year?

Mr. DYCHE. 1935.

The WITNESS. The Pennsylvania Railroad paid the Illinois Terminal Railroad, for maintenance and taxes, $232.36, covering a total of P. R. R. cars amounting to 4,438 cars. To convert this to a loaded car basis, we have what you might call an estimate of 2,346 loaded cars handled over the joint tracks in both directions, or an average cost per loaded car of 10 cents.

By Mr. DYCHE:

Q. And on what basis was that estimate made?

A. The estimate was made on the basis of the switching costs of the Illinois Central Railroad, who handled our cars, the Pennsylvania cars to the Staley plant. We determined the total cars handled by the Illinois Central, both loaded and empty, to be 3,776 cars, and our total loads to the Staley Manufacturing Company amounting to 1,996 cars, the ratio being 52.86 percent loaded cars to the total. That ratio was also applied on the Illinois Terminal costs to divide the cars between loaded and empties.

Q. And the figure per loaded cars handled by the Illinois Central is not an estimate?

A. It is not an estimate, the actual figures from the bills
410 rendered by the Illinois Central Railroad.

Q. Now, you have referred to the charges paid to the Illinois Terminal. Would you now refer to the charges paid to the Illinois Central Railroad.

A. The Pennsylvania paid the Illinois Central Railroad for switching of cars to the Staley plant $3,491.98. The loaded cars in and out amounted to 1,996, or an average cost per loaded car of $1.75.

Q. Now, was there not an additional payment made in regard to maintenance and taxes of that portion of the Illinois Central trackage which was used in reaching the Staley plant?

A. Yes, sir; there was an additional payment, but we had no basis of determining just what it would be. It is a small amount, possibly 2 cents per car, somewhere around that.

Q. I take it that the reason you could not make an accurate estimate of that charge is because of the fact that other portions of the Illinois Central trackage than this used in this transportation are considered as one, so far as this charge is concerned for maintenance and taxes?

A. The Pennsylvania use Illinois Central tracks between Decatur and Maroa, Illinois, and this connection track built by the Illinois Central is a part of that joint facility arrangement and we could not analyze that to determine how many cars or the cost as between loads and empties, but it is a very small figure.

411 Q. And the total charge you showed, as you indicated, would be $1.85, as I take it, plus the estimated cost of 2 cents.

A. Correct.

Q. Paid for maintenance and taxes over the Illinois Central tracks?

A. That is right.

Q. Or a total of $1.87?

A. Yes, sir.

Q. Now, referring to the 1936 cost, I take it that was determined in exactly the same manner as the 1935 cost that you have just described?

A. Exactly.

Q. Would you detail those costs?

A. Yes, sir; the Pennsylvania Railroad paid the Illinois Terminal Railroad for use of the tracks $305.47, the total P. R. R. cars 6,402. Converted to a loaded car basis, as we did in the

other case, 3,310 cars, producing an average cost per loaded car of 9 cents.

Q. And what is your figure for 1936 with regard to Illinois Central switching?

A. The Pennsylvania Railroad paid the Illinois Central Railroad for switching $4,496.62 for a total of 5,698 cars. Of these 2,946 were loaded cars, producing an average of $1.53 per loaded car. The ratio used to determine the loaded cars on the Illinois Terminal, the estimate you might call it, was 51.70 percent,
412 which was also obtained by taking the ratio of loaded cars switched by the Illinois Central to the total cars switched by the Illinois Central.

Q. And your 1936 cost would be further increased to a small extent due to payments to the Illinois Central, which you could not accurately determine?

A. Correct.

Q. And, I take it, for 1936 you estimate it also by approximately 2 cents per loaded car?

A. Yes, sir.

Q. Which would make a total cost for 1936 of $1.65?

A. Yes, sir.

Q. Now, in referring both for the years 1935 and 1936 to payments made to the Illinois Terminal, as I understand it, those payments include the proper charges for the main line of the Illinois Terminal used in that operation and also for the joint track owned by the Pennsylvania, Illinois Terminal, and Illinois Central?

A. That is correct.

Mr. DYCHE. I believe that is all.

Exam. WEAVER. The allowance for the Staley Company will have to be entered against the total cost.

Mr. DYCHE. Yes. Well, that is a matter of record in the proceeding and this gentleman is simply testifying as to the other costs.

Exam WEAVER. Yes.

Com. PATTERSON. Cross-examine.

413 Mr. DYCHE. I should like to say, before Mr. Richey leaves the stand, that he was placed on the stand in response to a question from Mr. Lovering who asked that this information be furnished.

Com. PATTERSON. If there is nothing more from this witness, he may be excused and we will recess until 9:00 o'clock tomorrow morning in this room.

(At 5:45 o'clock p. m., on Tuesday, April 23, 1940, an adjournment was taken to Wednesday, April 24, 1940, at 9:00 o'clock a. m.)

414

ORLANDO HOTEL,
Decatur, Illinois, Wednesday, April 24, 1940.

Met, pursuant to adjournment at 9:00 o'clock A. M.

Before W. J. PATTERSON, Commissioner; F. M. WEAVER, Examiner.

Appearances same as heretofore noted.

PROCEEDINGS

Com. PATTERSON. Mr. Dyche, you have another witness?

Mr. DYCHE. Yes; I have. Mr. Frushour.

H. L. Frushour, was sworn and testified as follows:

Direct examination by Mr. DYCHE:

Q. Give your name and address to the reporter, Mr. Frushour.

A. H. L. Frushour, Pennsylvania Railroad Agent, Decatur, Illinois.

Mr. DYCHE. I might say before continuing that Mr. Lovering requested the Pennsylvania to have Mr. Frushour testify in
415 this proceeding in regard to the handling of cars destined to and from the Staley Manufacturing Company.

By Mr. DYCHE:

Q. Mr. Frushour, what is your position with the Pennsylvania Railroad?

A. Freight Agent and Yard Master.

Q. At Decatur?

A. Yes.

Q. And how long have you held that position?

A. I have been here about seven years.

Q. Now, will you describe, during the period of 1935, as to how carloads were handled to and from the Staley plant?

A Well, at that time we handled them into our Belt Line in connection with the—the I. C. did our switching to and from there on a contract cost basis and this Belt was—our cars would have to go over the I. C. to the interchange with I. T. S., out over the I. T. S. to what is now the Spencer Kellogg Company, where this Belt Line started, and into the Staley plant from there.

Q. By "Belt Line" you refer to the track that is jointly owned by the Pennsylvania, the Illinois Terminal and the Illinois Central?

A. Yes, sir.

Q. And the Pennsylvania cars were switched to and from the Staley plant by Illinois Central power, I take it?

A. Yes, sir.

Q. From our interchange with the Illinois Central in Decatur?

A. Yes, sir.

416 Q. Will you describe how cars are presently handled to and from the plant?

A. They are interchanged under reciprocal switching through the Wabash.

By Com. PATTERSON:

Q. Previous to this arrangement did you bring your cars directly from your yard and around and deliver them to the Staley Company in their yard on a continuous movement?

A. Yes, sir; the Illinois Central picked them up in our freight house yard and took them directly over that line into Staley's. The same way on the out-bound, they brought them back and delivered them to us. We generally had a train waiting there at our yard office; they delivered them to us right there.

Q. What would be the situation now if you had a train waiting at your yard office?

A. We get the cars off the Wabash interchange with our own engine.

Q. Does that sometimes happen?

A. That a train is waiting?

Q. Yes; that you have hot cars to go?

A. Why, yes; it happens about every evening.

Q. That is, the Wabash make a quick delivery from the Staley plant to their interchange track and you pick them up and take them out?

A. Yes, sir.

417 Mr. BURCHMORE. I don't understand what that means.

By Com. PATTERSON:

Q. Will you explain what hot cars are?

A. Well, they are all hot with us as far as that is concerned. It seems as if our train is about the first one out of Decatur, and the Wabash, through the day, have these cars switched out and bring to their interchange about 4:30, as a rule. Our train leaves at 5:25.

Mr. BURWELL. I think, Mr. Commissioner, I could explain that. The schedule train of the Pennsylvania, as Mr. Frushour says, leaves at 5:25 in the evening and that is the only schedule train they have which will make third morning delivery in New York, fourth morning in Boston. The Wabash has the same delivery in connection with the train which leaves subsequent to 8:30, making third morning delivery at New York or fourth morning at Boston. If the Pennsylvania don't put the cars in the train, they don't get

them subsequent, or the next day, or the day thereafter; so it is up to them to see that the cars move in that train.

Com. PATTERSON. But they give you that service; they take them out and get them in that train?

Mr. BURWELL. Well, probably they do.

By Mr. BURCHMORE:

Q. Well, is that something about Staley traffic or is it about all cars out of Archer-Daniels or Spencer Kellogg or anybody else in Decatur?

A. I think it will apply to cars from any industry.

418 Q. They all have to be hot for your early train?

A. Yes.

By Mr. DYCHE:

Q. Will you describe in a little more detail the present method of handling cars, that is, in-bound cars? Will you describe the billing, as to whether it indicates a particular building to which cars should be switched?

A. Well, miscellaneous loads are billed with the building number or spot number that they want it on, which appears on the billing.

Q. Do you give that car number to the Wabash or how do you handle them?

A. Well, the first thing we do, we notify Staley's, of course, of the arrival of the car, and then call the Wabash by telephone and tell them we are sending such and such a car to them for Staley. 17 building, or whatever it may be, and follow that with a written switching order indicating the same information.

Q. And on out-bound cars how is the billing handled?

A. Well, on the out-bound cars they telephone us the information first, from what building it is, whether—starch is from a certain building or syrup from such and such a building, and give us the destination. They follow it with the switching order and we, in turn, give that information to the Wabash and ask them to switch the car to us, and follow it with this written switching order.

Q. You, of course, receive the bills of lading?

419 A. Yes, sir.

Q. From the Staley plant?

A. Yes, sir.

Q. Have you a figure, based on the year of March 1940 to indicate the average cost per loaded car for reciprocal switching charges paid to the Wabash?

A. Well, our average cost for March on 232 cars was $3.99½ per car.

Q. Do you consider March to be a representative month so far as the loading of the cars is concerned which would affect the amount of the reciprocal switching charge paid to the Wabash?

A. It would be for about possibly ten months out of the year, and two months—for instance, October and November, it would probably run higher on account of in-bound grain. It takes—the cost is based on 14 cents a ton, minimum $2.97 and maximum $5.45; and, of course, grain runs around 50 tons to the car. It would run that cost up.

Q. Then, as I understand it, if you were to take a yearly average per loaded car cost, it would be certainly as high as you have indicated for the month of March and probably somewhat higher; based on heavy loaded traffic in October and November?

A. It undoubtedly would run as high and I would think it would run a little bit higher than that.

By Com. PATTERSON:

Q. Does this grain average 50 tons to the car?

420 A. About 100,000 capacity.

Q. Ever load them to actual capacity?

A. Yes.

By Mr. DYCHE:

Q. Now, I believe that you were asked to furnish the loaded traffic handled to and from the Staley Plant over the Pennsylvania line haul during the years 1935 to date?

A. Yes, sir.

Q. Now, we already have in the record the traffic figures for 1935 and 1936, put in by a previous witness last evening. Now, I wonder if you could give us the figures for 1937, 1938, and 1939?

A. 1937 was a total of 2,578; 1938 was a total of 2,549; 1939 was a total of 3,103.

Mr. DYCHE. I believe that is all we have from this witness. Perhaps Mr. Lovering has some questions to ask.

Cross-examination by Mr. LOVERING:

Q. Mr. Frushour, on grain traffic coming in do you put that out on the inspection track first?

A. Well, we don't have any inspection track. All the yards in our—or all the tracks in our yard are used for inspection track because our yard is so small we put them just any place, switch them out of the train.

Q. Right there, what is the approximate working capacity of your yard?

A. I think it is around about 250 cars in all.

Q. Does this grain coming in usually undergo inspection
421 before it is turned over to the interchange?

A. Yes, sir.

Q. That is, the usual state or federal inspection?

A. Yes, sir.

Q. When those grain loads are released, do you usually get a release on everything that is in on that track?

A. Well, we usually get a release on all the cars that come in on one particular day. It runs pretty general that way.

Q. On these miscellaneous in-bound loads, I believe you stated the waybill usually indicates where those cars are to go?

A. Yes, sir.

Q. What do you do in case a waybill does not show?

A. Well, we have a commodity chart furnished by Staley's and that is where the most of the various commodities would go if it didn't appear on the waybill.

Q. Have you got a copy of that with you?

A. No, sir.

Q. Can a copy of those commodity charges be obtained for the record?

Mr. DYCHE. Commodity charge?

Mr. LOVERING. Whatever it is he speaks of.

Mr. DYCHE. I don't know whether we have extra copies of that or not. Do we, Mr. Frushour?

The WITNESS. We have one at the freight house, but only one copy.

422 Mr. LOVERING. I mean, can a copy of it be furnished?

Mr. DYCHE. I don't know. Where did you obtain that chart in the first instance?

The WITNESS. From the Staley traffic office.

Mr. DYCHE. I assume they would have copies.

By Mr. LOVERING:

Q. Were they sent to you?

A. It was furnished us; yes.

Q. Do you know by whom?

A. Why, by Mr. Burwell's office.

Q. How were the destinations shown in that commodity chart, building numbers and track numbers?

A. Yes, sir.

Q. Are there any of those commodities where you have more than one destination shown?

A. Not of ours. I think our commodities, the miscellaneous commodities, are paper boxes and that is about all; that is about

all the miscellaneous we get. We don't handle any coal or any of the various other commodities that——

Q. What will you do, assume you would have a case where you had commodities coming in and this commodity sheet or commodity chart, whatever it is, showed more than one destination?

A. Well, if it didn't appear on the waybill and we could not trace it down, we probably would call Staley's traffic office. We wouldn't deliver the car to the Wabash until we did furnish that information.

423 Q. You would hold the car until you did obtain the information?

A. Yes, sir.

Q. And is that commodity sheet anything that you have in use anywhere else here in Decatur?

A. Well, I don't think we have any sheet from any other industry. It is pretty well understood that certain industries—where their cars go.

Q. Will you please state a sample of the type of information shown on a waybill?

A. Well, like on the waybill in-bound or out-bound?

Q. In-bound.

A. In-bound?

Q. On miscellaneous traffic.

A. Well, I think our paper boxes generally is the 17 building or 20 building.

Q. Any track numbers given?

A. No, just the building number.

Q. Is this a recent development?

A. Well, it has been in effect for the past several months at least. I don't know just how far back it——

By Com. PATTERSON:

Q. Can you furnish for the record the exact date that plan went into effect?

Mr. DYCHE. You mean the first date that they furnished this commodity chart?

Com. PATTERSON: That is right, and supply a commodity

424 chart for the record.

Mr. DYCHE. To just clear it up, does the chart you refer to, was it showing the destination building on the billing?

Com. PATTERSON. We want a copy of the chart that this gentleman uses for placing cars in the Staley plant.

Mr. DYCHE. Well, I believe we brought out before that he only has one copy and I think maybe the request was directed to the Staley people.

Com. PATTERSON. Well, can't that be produced from somebody? It isn't a secret document, is it?

Mr. DYCHE. No; but as I understand it, we have just one copy in the freight house, which they would like to keep there, I assume.

Com. PATTERSON. Perhaps you can supply another one?

Mr. BURCHMORE. Can't you bring that one down? There is a good deal of mystery about this thing. Why can't you send for it?

Com. PATTERSON. Just a copy is all we care about.

Mr. DYCHE. I just thought—it came from the traffic department of Staley, I thought perhaps you would have extra copies.

Mr. BURCHMORE. Well, you bring down what you have got from us. We would like to see it. Maybe it is different than what we think it is, I don't know. But this isn't any mysterious affair.

425 Mr. DYCHE. I am not trying to indicate that it is, but I assumed you had other copies if it came from your plant.

Mr. BURCHMORE. It isn't your official direction, to tell you where to put the car. The bill of lading tells you where to put the car. That is our point of view.

Mr. DYCHE. That is our viewpoint also.

Com. PATTERSON. The yardmaster says he places the car in accordance with instructions shown on the chart.

Mr. BURCHMORE. Did he say that? I thought he said according to the bill of lading.

Com. PATTERSON. No; he said according to the chart.

Mr. LE FORGEE. Where there is no indication on the bills of lading, he consults the chart. Outside of that, he follows the directions on the bill of lading or waybill. As to whether or not those cars which are so designated by the number amount to 95 or 97 percent, with possibly one car——

Com. PATTERSON. Well, let the witness tell us that story.

Mr. LE FORGEE. I am not saying that is true, I am simply directing attention to the fact that it hasn't been disclosed by the evidence of the witness.

Mr. BURCHMORE. Mr. Commissioner, we don't want to be technical with objections, but when counsel for the Commission says, "If there is a car——" I think, if I were examining, someone might object that I should first bring out that there has been a car.

426 Com. PATTERSON. That is right, we are not dealing in speculation; that is, we are not speculating as to what there is.

Mr. BURCHMORE. The question, I think, respectfully, sir, is speculative—if there has been one, what do you do? Let's find out what car there was first.

Com. PATTERSON. That is right.

Mr. LE FORGEE. Or if there are exceptional cases or if there is a course of practice, it seems to me material.

Mr. BURCHMORE. I would like you to bring out some car that has happened with, Mr. Lovering, because we would like to find out.

Mr. LOVERING. Well, the witness said in case the billing did not show he would use the commodity sheet in determining what instructions to give the Wabash.

Mr. BURCHMORE. Well, develop the thing in your own way.

Mr. LOVERING. So I think what should be in the record is the copy he goes by.

Mr. BURCHMORE. Suppose we show as to that particular car that the bill of lading did specify the track to which it was going. Is that our fault?

Mr. LOVERING. I don't think that enters into my question. My question has to do with what he would do as the representative of the Pennsylvania.

By Com. PATTERSON:

Q. Are there such cars? Do cars show up in your yard without building instructions on the billing?

427 A. Well, I don't really remember of any and I don't remember of ever using this chart.

Com. PATTERSON. All right, then we will just dismiss the chart, if that never has happened.

Mr. BURCHMORE. That is the idea.

By Mr. LOVERING:

Q. Mr. Frushour, with respect to cars going out from the Staley plant, what is the first information you receive concerning them?

A. Telephone information from the Staley traffic office, giving us the car number and the initial, starch or syrup, from what building, and destination.

Q. What is your next move on that?

A. Well, we call the Wabash agent and give him the information and ask him to switch them to us for movement.

Q. What do you give him for that purpose?

A. Well, we follow it with a written switching order.

Q. Do you give the Wabash the same information that Staley gives you?

A. Well, practically the same.

Q. What variation?

A. Well, I would not know of any. We give them the initial and number and commodity and from what building it is coming and ask them to switch it to the Pennsylvania.

By Mr. BURCHMORE:

Q. Do you give them the destination?

A. No; not always. That would be a variation there.

428 We don't give them the destination.

By Mr. LOVERING:

Q. How often do you turn these switch orders over to the Wabash?

A. Well, the written instructions, we give that to them about once a day.

Q. Written instructions; you mean the written instructions to the Wabash?

A. Yes, sir.

Q. How many cars, on the average, will that cover?

A. Well, all the way from five to ten.

Q. Does this apply to all commodities?

A. It applies to everything out of their plant.

Q. Everything coming out?

A. Yes, sir.

Q. How long has that been in effect?

A. Well, I don't just exactly remember; it has been the past couple of months, I would say, or more.

Q. What was the arrangement before that? That is what I mean to get an impression of, is before this present arrangement was placed in effect, what was the first information you would receive from the Wabash about an outbound shipment?

A. Well, we get copies of the bill of lading from Staley's and ask the Wabash to switch.

Q. And the main difference is that now——

A. The telephone speeds it up a little, that is the only thing.

429 Q. In other words, you receive advance information prior to the bill of lading?

A. Yes, sir.

Q. Does the advance information that you receive in every case tell you where the car can be found?

A. Yes, sir; what building.

Q. What are you supposed to do in case it does not tell you?

A. Well, I don't know what we would do, we have never had that arise.

By Com. PATTERSON:

Q. Well, you don't have anything to do with these cars at that time, until you get them from the Wabash, do you, so what difference does it make what building they come from?

A. Well, it doesn't, only the Wabash require this information to switch the car to us and we give it to them.

Q. Don't the Staley yard clerk give the Wabash that information in the plant?

A. I couldn't tell you.

Mr. BURCHMORE. Mr. Commissioner, our evidence will show that he does not. There is no information whatever, and there isn't any Staley yard clerk.

Com. PATTERSON. Well, there is somebody over there that handles the Staley billing?

Mr. BURCHMORE. He communicates—Staley plant employees communicate with the agent of the Pennsylvania Railroad
430 and to no one else, concerning Pennsylvania Railroad shipments. We leave it to the Pennsylvania how they are going to get hold of that car, and the Wabash.

By Mr. LOVERING:

Q. Mr. Frushour, I lost track of your answer to my previous question, which was as to what you would do or what your instructions would be in case the advance information did not give you the building number where the car would be found.

Mr. LE FORGEE. I object to the question. In the first place, there is absolutely no sort of basis for such a speculative question about that. He might as well ask what he would do in the event a bus ran off the 12th Street Viaduct.

Com. PATTERSON. I don't see that it makes any difference where this car comes from. The Wabash take the car out and where they get it isn't important to the Pennsylvania Railroad. As a matter of fact, it is no concern of the Pennsylvania Railroad.

Mr. LOVERING. Pardon me just a moment.

By Mr. LOVERING:

Q. Mr. Frushour, under this reciprocal switching arrangement, what is the rate provided in that?

A. The rate?

Q. Yes.

A. 14 cents a ton, minimum $2.97, maximum $5.45.

Mr. LOVERING. Nothing else, Mr. Commissioner.

By Mr. BURCHMORE:

431 Q. Mr. Frushour, I want to ask you a question or two about your business as a common carrier out of Decatur.

About how many concerns are there in Decatur that ship by the Pennsylvania Railroad?

A. You mean carload shipments?

Q. Yes; carload shipments.

A. Oh, I imagine there is 25 or 30.

Q. That ship right along, month in and month out, you mean?

A. Either in-bound or out-bound.

Com. PATTERSON. That is, direct connections with the Pennsylvania?

Mr. BURCHMORE. No; I didn't mean just simply shippers on the Pennsylvania. Let me put it this way.

The WITNESS. That is what I——

By Mr. BURCHMORE:

Q. You have carload shipments on the Pennsylvania Railroad out of Decatur that originate at plants that have side track connections with the Pennsylvania, do you?

A. Oh, yes; we have some.

Q. What plants are they that have side track connections with the Pennsylvania rails?

A. Well, the Oakes Products Company.

Q. Yes.

A. The Aristocrat Wall Paper Company, Leader Iron Works, Decatur Soy Products.

Q. Yes.

A. Well, we have several other small——

432 Q. Livergood and Hight?

A. Oh, that is—the Decatur Soy Products, I think, is in that location.

Q. I see.

A. These tracks are—part of these tracks are under joint operation with the Illinois Central, but we go in there the same as if it was our own rails.

Q. Well, now, besides these plants—and they are not the largest plants in Decatur, are they, that you have named?

A. No, sir.

Q. Besides those plants there are a number of plants in Decatur that are on the rails of the Wabash that have switch tracks connecting with the Wabash or with the Baltimore and Ohio or Illinois Terminal or the Illinois Central and which do give you business for line haul out of Decatur?

A. Yes, sir.

Q. Now, all of those industries ship east at the same Decatur freight rate and you folks have them switched over to you by these different railroads?

A. Yes, sir.

Q. Well, now, how many trains do you have out of Decatur that haul freight from all these various concerns?

A. Well, we have two. We have one in the evening and a local freight in the morning.

Q. What does the local freight have, just traffic for
433 country stations?

A. Mainly.

Q. How far does it run?

A. Terre Haute, Indiana. We also have a local into Peoria, west-bound.

Q. Well, now do cars of the Staley Manufacturing Company, which they are shipping to points on the Pennsylvania or beyond, do they move in the very same trains with the cars from all these other concerns?

A. Yes, sir.

Q. Well, how do you get the cars from other industries than the Staley Company over to your trains? How do they come to you?

A. Well, Archer-Daniels-Midland Company, for instance, with reciprocal switching under the I. C., the I. C. operates the switching in their plant. We give them an order to switch any particular car that they may want to go out over our lines, we give the I. C. a switching order to switch that car over to us.

Q. And the I. C. goes and gets it?

A. Yes, sir.

Q. Do you know how they get it? Do you supervise the manner in which they get the car, and so forth?

A. Not at all; we just tell them we want such and such a car.

Q. Do they hurry that car over to make your train?

A. They do sometimes, if we would ask them to.

434 Q. Well, do you ask them to any less frequently or any more frequently than you ask them to hurry a car from Staley?

A. No; I don't think so.

Q. Well, from the standpoint of service, I want you to say whether you can think of any difference, and what that difference is, as regards the Pennsylvania Railroad, or in the method of service or the quality of service or the speed of service or the demands of the industry, as regards the service for the Staley Company on one hand on their out-bound shipments, and any of your other shippers here in Decatur.

A. Well, I can't see any difference as far as our operation is concerned.

Q. Any difference as regards what they ask you to do and promptness and expeditious methods and all?

A. Not any.

By Com. PATTERSON:

Q. They all telephone to you when they have a car ready, just the same as the Staley Company does?

A. Well, they sometimes give us advance notice and sometimes not.

By Mr. BURCHMORE:

Q. Is it of advantage or disadvantage to you to have this advance telephone notice?

A. Well, it is really an advantage to us, I would say.

Q. You are glad to know as soon as possible what freight you are going to have for your train that day?

A. Yes; we can plan our work better, and so forth.

435 Q. Well, now, is there anything that has come to your notice or that you can think of, in regard to the handling of the out-bound traffic given you by the Staley Company, where economies could be affected or improvements or benefits or advantages to the Pennsylvania Railroad, if the Staley Company would make any change? Is there anything they could do to cooperate or help that would improve the situation from the Pennsylvania Railroad's point of view?

A. They could give us more business.

Q. Well, if they gave you more business you would have to do more work, would you not? Of course, that is obvious.

A. Sure.

By Com. PATTERSON:

Q. If they gave you more business they would have to take it away from somebody else, wouldn't they?

Mr. BURCHMORE. No; not necessarily. Maybe they will take it from the trucks, if they give the trucks any business.

Com. PATTERSON. I see. Just to what extent do the Staley people have trucks?

Mr. BURCHMORE. Well, I can bring that out if you care to know it.

Com. PATTERSON. Oh, I don't care. Off the record.

(Discussion outside the record.)

By Mr. BURCHMORE:

Q. Now, that is the out-bound freight. Now, on in-bound freight for the past several months the waybills have all shown the building or track locations to which in-bound

436 shipments were moved, according to your information. You have mentioned that?

A. Yes, sir.

Q. Now, is it an advantage or disadvantage to the Pennsylvania, or does it make any difference to the Pennsylvania, whether that

information comes to you on the waybill or should be obtained after the car got here?

A. Well, it really don't—I can't say it would make very much difference. We notify them of the arrival of the car and they could tell us just as handily then where the car—what building the car would go to or what spot they would want it.

Q. Now, as regards your trains that come into Decatur, the train coming in carries the cars that are destined to all industries here?

A. Yes, sir.

Q. Staley's cars are in the same train with the other cars?

A. Yes, sir.

Q. Is there any car that comes into Decatur, in any carload freight, on which you do not give notice to the consignee upon arrival of the cars here?

A. Well, I think we do in all cases. In some cases we are not really required to.

Q. But you do customarily?

A. We customarily generally give advance notice before the train gets in, on some of them.

437 By Com. PATTERSON:

Q. Do you do that by telephone to all your consignees here?

A. We do by telephone where we have telephone agreements, and generally do it anyhow, whether they sign up the telephone agreement or not. It hurries the matter up that much.

Q. Will you explain this telephone agreement? Just what is that?

A. Well, a telephone agreement is a written agreement that they will accept legal notification of the arrival of their cars of freight. Now, some firms, they want a written arrival notice and don't want to accept a telephone notice as legal notice.

By Mr. BURCHMORE:

Q. When you have a car that comes in—when you have a train that comes in, do you have to break it up and classify the cars according to what industries they are going to?

A. Certainly.

Q. Is there any different classification of cars, any different service of classification of cars, necessary on your part as to cars going to the Staley Company on the one hand or as to cars going to other concerns on the other hand?

A. No; there is no difference. Any industries that are located on the Wabash, if we are switching the Staley cars or Decatur Mill cars, or Wagner Malleable cars, we put them all in the same cut and take it over to the Wabash.

By Com. PATTERSON:

Q. As a matter of fact, you take all cars going over to the
438 Wabash and bunch them together and give them to the Wabash?

A. Yes, sir.

Q. You don't switch them in station order for the Wabash?

A. No, sir.

By Mr. BURCHMORE:

Q. It is only cars to the Staley plant that you folks have any extra charge provided in your tariff; you don't have any other industry here in Decatur that your tariff provides a special charge except Staley, do you?

A. No, sir.

Q. I am trying to ferret out some reason why your tariff should contain a special charge to Staley and not a special charge anywhere else, other than perhaps an order of the Commission.

Com. PATTERSON. I don't suppose he would know.

Mr. BURCHMORE. Well, he may know something about the physical facts.

Exam. WEAVER. The Pennsylvania does not collect that charge.

Mr. BURCHMORE. They have got it in their tariff and we have asked them to take it out.

Exam. WEAVER. It would not mean anything to you if they did take it out.

Mr. BURCHMORE. I could give you a nice talk on that and I would like to, what it would mean to me.

Exam. WEAVER. You have no connection.

Mr. BURCHMORE. I think we do, but you don't really want
439 me to break loose here, I will just waste a lot of time. But take this physical service which this witness does know about.

By Mr. BURCHMORE:

Q. When the cars come in on the train and you turn them over to the roads, you turn over some cars for Archer-Daniels, you turn them over to the Illinois Central, is that right?

A. Yes, sir.

Q. Do you give the Illinois Central some different instructions or some different action on your part than the cars that you turn over to the Wabash which are for Staley?

A. No, sir; I don't think we do.

Q. Suppose you have some cars coming in here intended for Spencer Kellogg, the old Shellabarger Company, who do you turn them over to?

A. Well, really we are—that is on our line. In fact—or we consider it that, while the Illinois Terminal does the switching there on a cost basis.

Q. The Illinois Terminal does the physical work of getting the car into the Spencer-Kellogg plant?

A. Yes, sir.

Q. Where it comes into Decatur over the Pennsylvania Railroad?

A. Yes, sir.

Q. But you pay the Illinois Terminal for that work?

A. If we are taking it from their connection out and putting——

Q. Do you know how they do that work or what the work is they do?

440 A. I don't know anything about their operation, only that they place our cars in the plant and the out-bound cars, bring them to us.

Q. Well, do they place those cars in the plant—the Pennsylvania Railroad cars now coming into Decatur, do they place them in the Spencer Kellogg plant at the particular location where Spencer Kellogg wants to unload them?

A. Yes; I presume they do. We give them the cars for delivery to Spencer Kellogg Company and they are——

Q. Do you happen to know whether on the bills of lading of shipments coming in destined to—coming in over the Pennsylvania Railroad destined to the Spencer Kellogg Company——

Com. PATTERSON. The waybill.

Mr. BURCHMORE. What?

Com. PATTERSON. You mean, the waybill.

Mr. BURCHMORE. On the bills of lading, I am asking that.

Com. PATTERSON. Shipments coming in from line haul?

Mr. BURCHMORE. Yes.

Com. PATTERSON. I thought they came in on waybill.

By Mr. BURCHMORE:

Q. Do you happen to know—well, I will ask the two questions in one because it seems that—do you happen to know whether the bills of lading or the waybills on shipments coming into Decatur over the Pennsylvania Railroad—now, you see, the Pennsylvania Railroad issues the bills of lading—whether the bills of

441 lading or the waybills show the particular building or the particular track in the Spencer Kellogg plant to which the shipment is destined to go?

A. They do not.

By Com. PATTERSON:

Q. Well, don't you make your bill of lading from the waybills on arriving cars?

A. On arriving cars?

Q. Yes; that is what he is talking about.

A. No; the bill of lading would be made at the originating point.

Q. Well, you would not get that?

A. We get most of them. Grain is handled on shipper's order bills of lading.

Q. I see.

A. And we take those up.

By Mr. BURCHMORE:

Q. And in railroad practice the waybills are ordinarily made from the information contained in the bill of lading?

A. Yes.

Com. PATTERSON. Yes; at the originating point.

Mr. BURCHMORE. And should correspond.

Com. PATTERSON. That is right.

By Mr. BURCHMORE:

Q. But to these other industries, Spencer Kellogg and Archer-Daniels, the waybill and, to the extent you know it, the bills of lading, do not ordinarily contain the specified delivery
442 track or building where the shipment is to be unloaded?

Com. PATTERSON. Well, what difference would that make to this witness where——

Mr. BURCHMORE. I am asking as a matter of information, Mr. Commissioner. I would like to explain to you why I think this is material. In the 1931 and 1932 hearings it seemed to us that the Commission's representatives, attorney Haggerty and Director Bartell, made a great point of various industries—the fact, why, this great industry and that great industry had a lot of tracks and after the car got to the destination city the railroads had to wait and find out where in the plant that car was wanted and that involved delays to engines and delays to railroad performance.

Now, if there is anything in that, Mr. Commissioner, so far as we are concerned, I think we have so arranged it that the railroads don't have to wait for any information, and, just as they know that a carload of freight is intended for a certain coal yard or a certain lumber yard or a certain team track here in this city, they know as to the Staley Company that it is intended for our elevator or our coal pile or our Building No. 48

before the car ever gets to Decatur, and there is no delay to them in finding out where it is going to go.

Com. PATTERSON. I think, so far as this witness is concerned, it is perfectly obvious that all cars going to the Wabash are
443 put in one cut and delivered to the Wabash. Now, what the Wabash does with them after they get them is a matter for the Wabash. Isn't that about what happened?

The WITNESS. Yes, sir.

Com. PATTERSON. So all cars that are going to the Wabash go in one cut together?

Mr. LE FORGEE. I would like to ask a few questions.

By Mr. LE FORGEE:

Q. Your name is Frushour, isn't it?

A. Yes, sir.

Q. I want you to examine the paper which I now hand you, which I will ask to have marked "Exhibit 21."

(Exhibit 21, Witness Frushour, marked for identification.)

Q. State whether or not that is your signature attached to the bottom of that paper.

A. Yes, sir; it is.

Q. And was it there placed in the pursuance of your duties and labor which you are connected with out there?

A. Yes, sir.

Q. You may state whether or not that paper is typical and representative of the entire transactions between you and the Staley Company, between the Pennsylvania and the Staley Company, in relation to the matters which it purports to set forth.

A. Yes, sir.

Q. You will note from that paper that there appears as to the consignee, "A. E. Staley Manufacturing Company Syrup Plant & 17 Bldg."

444 A. Yes, sir.

Q. You mean by that that indicates the place where this car was to go?

A. It was so intended. That information was translated to them.

Q. What do you make this memorandum from, or this paper?

A. Well, it is from the original—under our plan the waybill, the freight bill and the freight receipt and the arrival notice, and copies are all made at one operation. That is really a copy of the original freight bill or original waybill.

Q. Yes; as a matter of fact, the information—withdraw that question.

Com. PATTERSON. Let me look at that a minute.

Mr. LE FORGEE. In just a minute, if your Honor please. I am identifying it for the purpose of enabling you to see it.

Com. PATTERSON. O. K.

By Mr. LE FORGEE:

Q. The information which is written in that paper is prepared by your office, isn't it?

A. No, sir; on the original of that, that was prepared at Indianapolis, Indiana.

Q. At what office?

A. The Pennsylvania freight office at Indianapolis, Indiana.

Q. And then sent to you?

A. Yes, sir.

Q. For you to handle in compliance with the rules and regulations they have for you in the discharge of your duties?

445 A. Yes, sir.

Q. I don't suppose that you know the source from which they get that information for making the insertions in here, do you, and filling in the blanks?

A. Well, I presume it was from the original bill of lading.

Q. I am afraid the Commission would be right in not allowing you to presume. You know nothing——

A. I know nothing about it; no.

Q. At any rate, this paper does come to you in that form?

A. Yes, sir.

Q. When you receive that paper, that paper is used by you for the purpose of the collection of the freight bill, isn't it?

A. Yes, sir.

Q. You present that bill to the Staley Company?

A. Yes, sir.

Q. As I understand you, it is typical of all the other information, all the other shipments?

A. Yes, sir.

Q. And when that payment is made, it is made in pursuance of the terms and provisions of the freight bill and the receipt which you personally and in your own handwriting affix to that instrument, isn't it?

A. I don't believe I got that question.

Q. When the money is paid to you, it is in pursuance of the provisions of this instrument which you have presented to

446 them, isn't it?

A. Yes, sir.

Q. And it is upon your receipt of that paper, and the other papers which are exactly like it, that you turn this over to them?

A. Yes.

Mr. LE FORGEE. Thank you, Mr. Frushour.

Exam. WEAVER. Have you copies of that?

Mr. LE FORGEE. I have twelve of them here. If Your Honor please. I have no copy of that identical one. I have twelve here of different shipments.

Mr. BURCHMORE. Let's make copies of that, or get copies of it.

Mr. LE FORGEE. I will be very glad to furnish the Commissioner and the Examiner with such copies as they want. You can do that, Mr. Frushour?

Exam. WEAVER. Well, and the parties to the case, too.

Com. PATTERSON. The parties to the case, let them each have a copy of it.

Mr. LE FORGEE. Yes; and would you like to examine the rest of them? You will find them identical.

Com. PATTERSON. No.

Mr. LE FORGEE. If I may be permitted——

Mr. BURCHMORE. Just a moment, can't we have for the record the date and car number on that? I want to identify that in the

447 record.

Mr. LE FORGEE. You have it identified as an exhibit.

Mr. BURCHMORE. I want it identified in accordance with the usual——

Mr. LE FORGEE. Oh.

Mr. BURCHMORE. It is a freight bill, dated March 6, 1940, on Waybill No. 12607, Car I. C. 18959, from Indianapolis, Indiana, 875 bundles of corrugated pulpboard boxes.

Com. PATTERSON. That will be received and identified as Exhibit 21. This is a little unusual as a—it is a combination, as I take it, of a freight bill and a waybill and an expense bill.

Mr. BURCHMORE. Mr. Commissioner, I think this agent will say that the routine practice of the Pennsylvania Railroad—I have heard it given in many cases—is that on a duplicating machine a stenographer writes a manifold set and one of those manifold sets is the waybill and another is the freight bill and another is the agent's record.

The WITNESS. Freight receipt and arrival notice.

Mr. BURCHMORE. It is done by a manifold process and different sheets have different printed matter on them but the same entries of that one.

Mr. LE FORGEE. They are identical so far as the inserted matter is concerned.

Mr. BURCHMORE. It is the same information but one is to

448 serve the purpose of the waybill for the freight conductor, and so forth, another for the freight bill for the delivering agent.

Com. PATTERSON. And still it is a little unusual, this type of waybill.

Mr. BURCHMORE. But it is the invariable practice, is it not, counsel, of the Pennsylvania Railroad?

Mr. DYCHE. I think it is the general practice.

Exam. WEAVER. This is a receipt for money paid by the consignee of this shipment?

Mr. BURCHMORE. If it is paid, it is; yes.

Exam. WEAVER. That is all this is, isn't it? That is what they call an expense bill, isn't it?

Mr. BURWELL. That is right.

Com. PATTERSON. Well, it is a combination of freight bill, way bill, and expense bill.

Mr. BURCHMORE. This particular sheet isn't a waybill; no, sir.

Com. PATTERSON. Well, this particular sheet is identical with the waybill, so far as the information is concerned.

Mr. LE FORGEE. Correct, so far as the typed information is concerned.

Com. PATTERSON. The headings are different.

Mr. BURCHMORE. That is right.

Mr. BURWELL. Mr. Commissioner, I think a great many of the railroads have adopted that same system under the I. R. R.
449 When I was in the railroad business they used an entirely different type of expense bill, but I think I. R. R. perfected this for the railroads, the same system.

By Mr. LE FORGEE:

Q. Mr. Frushour, I understood you to say something about some inspection track for the Pennsylvania. My attention was diverted for a minute. Will you tell me where the inspection tracks are, or the track of the Pennsylvania is?

A. Well, I believe I stated we did not have any particular track.

Q. I see.

A. Any track that happened to be empty and we could use to haul these cars on, that is the way we did.

Q. That is for grain, is it?

A. For grain; yes, sir.

Q. Who uses that track, the Pennsylvania?

A. Yes, sir.

Q. What cars do they place in there?

A. Well, any cars that we wish or——

Q. Any cars that you are required to place in there for inspection?

A. Well, any cars, yes; for inspection or——

Q. Do you receive cars of grain or cereals for the Archer-Daniels-Midland?

A. Yes, sir.

450 Q. Do they go in that track?

A. Yes, sir.

Q. The Spencer Kellogg Company, do they go in that track?

A. Yes, sir.

Q. The Decatur Soy Products Company?

A. Yes, sir.

Q. Decatur Milling Company?

A. Yes, sir.

Q. The Staley Manufacturing Company?

A. Yes, sir.

Q. Le Grand & Son?

A. Yes, sir.

Q. Baldwin Elevator Company?

A. Yes, sir.

Q. Evans Elevator Company?

A. Yes, sir.

Q. Livergood and Hight?

A. Yes, sir.

Q. James E. Bennett?

A. Yes, sir.

Q. So that, as a matter of fact, whenever any grain comes to Decatur in carload lots, without reference to instructions from anybody and under the established practice and course of handling, grain in your yard goes up on some inspection track to await inspection by the authorized inspector?

451 A. Yes, sir.

Q. And that is done of your own volition and without instructions from anybody?

A. Yes, sir.

Mr. Le Forgee. That is all.

Com. Patterson. Are there any other questions of this witness? [No response.] You may be excused.

Mr. Le Forgee. I want to ask Mr. Frushour one other question, if I may be permitted.

Com. Patterson. All right.

By Mr. Le Forgee:

Q. In this list of consignees of grain that you have described as placing on the inspection track, were these ten or twelve or fourteen names that I gave you people and concerns which are engaged in buying and selling grain in carload lots in Decatur?

A. Yes, sir.

Mr. Le Forgee. That is all.

(Exhibit 21, Witness Frushour, received in evidence.)

(Witness excused.)

A. W. RICHARDSON was sworn and testified as follows:

Direct examination by Mr. STRASSER:

Q. Please state your name.

A. A. W. Richardson.

Q. Where do you live?

452 A. St. Louis, Missouri.

Q. Are you in the service of the Receivers of the Wabash Railway?

A. I am.

Q. In what capacity?

A. General Freight Agent.

Q. How long have you occupied that position?

A. About three and a half years.

Q. What other railroad experience have you had?

A. Altogether I have had twenty and one-half years of railroad experience in various capacities, had various positions with the Wabash Railway.

Q. On your present position, state generally your duties.

A. I am in charge of rates and divisions of the Wabash Railway.

Q. And does your work require you to familiarize yourself with the provisions of tariffs which are in effect over the lines of the Wabash?

A. It does.

Q. You are appearing here on behalf of the Receivers of the Wabash Railway Company?

A. I am.

Q. Well, you may proceed to state what you have to say on this question that it in issue in this proceeding.

A. I am appearing here for my company and its receivers because of conditions created by the decision of the Inter-

453 state Commerce Commission in its 55th Supplemental Report in Ex Parte 104, Part 2, involving the A. E. Staley Manufacturing Company on the one hand and the Baltimore and Ohio Railroad Company, the Pennsylvania Railroad Company, the Illinois Central Railroad Company, and the Illinois Terminal Railroad Company, and the Wabash Railway Company, and the others; also because of the proposed cancellation of certain provisions of the Wabash Railway Tariffs issued by it or its agent, R. A. Sperry, who is also chairman of the Illinois Freight Association, as mentioned in the I. & S. order, which were originally published to comply with the decision and order of the Commission in the Ex Parte 104, Part 2, case just mentioned, as construed by counsel of all lines serving the city of Decatur and the plant of the A. E. Staley Manufacturing Company at the time the Commission's order became effective.

Mr. BURCHMORE. Will you repeat that reference to what counsel construed the order?

The WITNESS. By counsel of all lines.

Mr. BURCHMORE. May the sentence be repeated.

(Last paragraph of answer read.)

By Com. PATTERSON:

Q. Are you speaking for the counsel of all the railroads?

Mr. BURCHMORE. Mr. Commissioner, I stopped him to make that—of course, it would be hearsay for a layman to say what counsel has construed.

Com. PATTERSON. Speaking for all the railroad lines,
454 parties to this case?

Mr. BURCHMORE. I had thought there might be some difference.

Mr. STRASSER. He is merely indentifying the tariff filed naming the spotting charge, which was filed on the advice of counsel in accordance with their construction of what the order of the Commission required in the supplemental case.

Mr. BURCHMORE. Can I cross-examine him on what counsel did think about it.

Com. PATTERSON. Sure.

Mr. STRASSER. If you think it is of enough importance.

Mr. BURCHMORE. Well, I do if you think it is. It is just an offhand opinion, what counsel thought.

Mr. GOEBEL. He is just stating why the tariff was filed.

Mr. STRASSER. That is all, I don't know that the matter is so important.

Mr. BURCHMORE. Well, it is very important if it has this meaning. I understand the witness to say that the only reason this tariff was filed was because counsel thought that the law required them to file it, not because he is a traffic man and thought it was a good thing to do.

Com. PATTERSON. That is what I got out of it.

Mr. BURCHMORE. I think that is important.

Mr. STRASSER. That was the statement.

Mr. LE FORGEE. In that event it would be hearsay.

455 Com. PATTERSON. All right, go ahead.

By Mr. STRASSER:

Q. All right, proceed, Mr. Richardson.

A. Due to the decision and the order in the 55th Supplemental Report of the Commission, and the interpretation made of it by the carriers serving the plant of the Staley Manufacturing Company, a cost study of the operation was made within the plant

confines or beyond the so-called interchange tracks, as described in the record of that case.

The result of this study was published in Agent R. A. Sperry's Tariff No. 79, I. C. C. No. 376, effective on November 15, 1937; and effective on the same date changes were made in the following tariffs: Wabash Tariff J–5000, I. C. C. 7025, Illinois Commerce Commission 1005; Wabash Tariff V–5493, I. C. C. 7020, Illinois Commerce Commission, 1004; Wabash Tariff O–13433, I. C. C. 6906, Illinois Commerce Commission 962; Wabash Tariff C–18214, I. C. C. 6990, Illinois Commerce Commission 991; Wabash Tariff 19718, I. C. C. 7032, Illinois Commerce Commission 1010.

These tariffs were filed with the Interstate Commerce Commission and the Illinois Commerce Commission simultaneously. On or about October 21, 1937, the A. E. Staley Manufacturing Company filed with the Illinois Commerce Commission, and on or about October 27, 1937, with the Interstate Commerce Commission, its petitions for suspension, setting forth fully its objections to the tariffs.

By Mr. LE FORGEE:

456 Q. Pardon me just a minute, Mr. Richardson, are you reading from a memorandum which you have prepared or caused to be prepared, or are you stating from your memory?

A. I am reading from a memorandum that I have prepared.

Com. PATTERSON. That is to refresh your memory?

The WITNESS. It is to refresh my memory from the records, from our records.

Com. PATTERSON. All right.

The WITNESS. (Continuing.) The Interstate tariffs, however, were permitted to go into effect as published on November 15, 1937. The Illinois Commerce Commission granted the petition for suspension by its order dated October 27, 1937, docketed the case as No. 26219, entitled "In the matter of the proposed change in terminal charges to and from the A. E. Staley Manufacturing Company at Decatur, Illinois, stated in Freight Tariff No. 79, Illinois Commerce Commission No. 184, filed by R. A. Sperry, Agent et al," and asigned the case for hearing.

The case was heard and by its order dated July 26, 1938, the Illinois Commerce Commission found that the schedules under suspension in that proceeding had not been justified and entered its order requiring the permanent cancellation of the tariff.

The findings of the Illinois Commerce Commission may be briefly summarized as follows: 1. That generally the line haul rate——

Com. PATTERSON. Why don't you just put in the order?

Exam. WEAVER. We have that report.

457 Com. PATTERSON. It is already in the record.

Mr. STRASSER. Well, a copy of the order has been incorporated in the very complete exhibit filed by the Illinois Central witness, so I suppose that may be omitted, Mr. Richardson.

The WITNESS. The proposed schedules on Illinois intrastate traffic were cancelled and are not effective on such traffic today. On or about March 16, 1938, the A. E. Staley Manufacturing Company filed with the Interstate Commerce Commission its petition for reconsideration and rehearing. The Receivers of the Wabash Railway, on or about March 19, 1938, filed their answer to said petition, substantially admitting the facts alleged, and said:

"In response to the averments contained in Division V–111 of said petition, the defendants are advised that said averments raise a legal question under the facts contained in said petition which are hereinabove admitted by this answer, but these defendants say that in their judgment, and having due regard to the operations of these defendants in the delivery and receipt of carload freight to or from other industries directly served by these defendants through the instrumentalities of industrial or spur tracks, the petitioner herein is subject——

By Mr. STRASSER:

Q. That was the Staley Company?

A. That was the Staley Company. [Continuing.] "Is subject to undue prejudice, undue discrimination, by the enforce-

458 ment of the terms and provisions of the order or orders of this Commission under and pursuant to which these defendants and other carriers are subjecting the petitioner to the present charge of $2.27 per car, in addition to the established freight rates to and from Decatur, Illinois."

Q. That charge of $2.27 mentioned there, is the charge which now has become $2.50?

A. Under Ex Parte 123. In conclusion the said answer joins in the prayer of the petition of the A. E. Staley Manufacturing Company that the proceeding be reopened and a rehearing granted.

On April 8, 1938, the Interstate Commerce Commission reopened the proceedings for further hearing, but limited such rehearing "to permit the presentation of evidence relating to any charges in operating or other conditions at the plant of the A. E. Staley Manufacturing Company since the prior hearing."

The hearing was held in Chicago on June 27, 1938, before Mr. Homer C. King, Special Examiner, who thereafter, on or about November 3, 1938, served his proposed report, wherein he stated the following conclusion: "There is nothing in this record indicat-

ing that there is any interference encountered in the industrial processes performed within the Staley plant which would delay or prevent the Wabash from performing the spotting service. It is apparent that changes in track connections and the addition of several hundred feet of new tracks have greatly facilitated the movement of cars to and from the Staley plant. It
459 was testified that the service as now performed has been greatly simplified in comparison with the service performed by the Staley Company locomotives at the time they performed the spotting, and that the number of locomotives——"

By Com. PATTERSON:

Q. Are you reading from the proposed report? Are you reading from Mr. King's report?

A. No; I am not.

Q. Pretty close to it, are you not?

A. It is a quotation from it.

Q. A quotation from it?

A. Yes, it is.

Q. From the original report?

A. From the proposed report.

Com. PATTERSON. If you want to build the record up, I don't care, you are paying for it, but we have the report.

Mr. STRASSER. Well, this is just a part of his historical narration to bring the case down to the filing of the tariff's which are here under suspension.

Com. PATTERSON. We have the proposed report and he did say he was quoting from it.

Mr. STRASSER. Well, he has almost completed now. I think there is just a line more that completes that paragraph that we want to call especially to the attention of the Commission at this time.

Mr. BURCHMORE. Well, it is against the rules.

Com. PATTERSON. Oh, this is all right.

460 Mr. STRASSER. May he finish that sentence? You broke him off right in the middle.

Mr. BURCHMORE. That is all right.

The WITNESS. "The number of locomotive hours within the plant has been considerably reduced." This is shown on Sheet 14 of the mimeograph copy. The Special Examiner's proposed report concludes with the recommendation that the Commission should find that since the issuance of the original and 55th Supplemental Reports in this proceeding substantial changes have occurred in the method of spotting cars in the Staley plant; that the spotting service performed is in conformity with the principles announced in the original report, and that such service may

be performed by the Wabash on interstate shipments under its line haul rates with the additional charge.

No final report was ever issued by the Interstate Commerce Commission, but on July 29, 1939, it issued another order in this case which required that the said proceeding be reopened for further hearing concerning the operating or other conditions at the A. E. Staley Manufacturing Company plant, with respect to delivery or receipt of cars handled to or from its plant at Decatur, Illinois, including the interchange arrangements with the connecting lines on such traffic, and regarding intraplant movement within such plant.

We feel, and have always felt, that the assessment and the collection of the so-called spotting charge, in addition to
461 the road haul charges, on interstate traffic to and from the A. E. Staley Manufacturing Company results in a definite discrimination against that company and subjects it to undue prejudice, which the Interstate Commerce Act forbids. At no other plant or point served by the Wabash rails is such a charge made for similar service——

By Com. PATTERSON:

Q. You haven't complained about any of the other plants, have you, that are getting service that Staley doesn't get?

A. No; we have not. At no other plant or point served by the Wabash rails is such a charge made for similar service, and as a result, having due regard to the operations of the Wabash in the delivery and the receipt of carload freight to and from other industries directly served by the Wabash Railway through the instrumentalities of industrial or spur trucks, the A. E. Staley Company, in our judgment, is subject to undue prejudice and undue discrimination by the enforcement of the terms and provisions of the Commission's orders heretofore made in this proceeding, in that that company is subjected to a charge of $2.50 per car in addition to the established freight rates to and from Decatur, Illinois.

Being so definitely confirmed in this view, which appears so obviously sound, we concluded that the logical recommendation made by Special Examiner King in his report, his proposed report, would ultimately be adopted by the Commission and that the
462 order which we construed to require the imposition of the charge would eventually be set aside.

It was, therefore, decided to direct Agent Sperry to file for its account a schedule cancelling the provisions of the tariff now in effect providing for the terminal charge, so that if and when the Commission's order was recinded there would be nothing in the way of continuing the service at the Staley plant in the manner in

which it was conducted before the spotting charge was inaugurated, that is, restoring the status that existed before the effective data of Supplemental Order No. 55.

Accordingly, the following schedules were filed with the Interstate Commerce Commission on November 10, 1939, with an effective date December 15, 1939: Sperry's Tariff No. 79-A, I. C. C. 455; Wabash Tariff No. 19718, I. C. C. 7032, Supplement 7; Wabash Tariff P-13433, I. C. C. 7059, Supplement 13; Wabash Tariff D-18212, I. C. C. 7062, and Supplement 38; Wabash Tariff W-5493, I. C. C. 7119, Supplement 25; Wabash Tariff K-5000, I. C. C. 7169, Supplement No. 6.

The Commission, by its order of November 21, 1939, suspended these schedules and inaugurated I. & S. Docket No. 4736, which was consolidated with Ex Parte 104, Part 2, for hearing.

By Mr. STRASSER:

Q. Have you prepared some exhibits which you wish to offer at this stage of your testimony?

A. I have prepared three sets of exhibits.

463 (Exhibit 22, Witness Richardson, marked for identification.)

Q. Does that exhibit require any explanation, Mr. Richardson? If so, make such comment as may be necessary.

A. In this particular exhibit we have produced various items in Wabash switching Tariff K-5000, I. C. C. 7169, showing the items now in effect as compared with those suspended by the Interstate Commerce Commission in I&S Docket 4736.

I wish to call particular attention to Item No. 75, as shown on Page 1 of the exhibit. This Wabash Tariff K-5000, I. C. C. 7169, is applicable at all points on our railroad, including Decatur, Illinois, except at Chicago, Illinois, Kansas City and St. Louis, Missouri, East St. Louis, Illinois, and at Buffalo, New York. It will be noted that in order to set aside the provisions of Item No. 75, it was necessary to make a special note and restrict its application so that it would apply on traffic to and from the plant of the A. E. Staley Manufacturing Company at Decatur.

By the publication of this item the A. E. Staley Manufacturing Company was subjected to exceptional treatment, in that it was denied the benefit of service accorded all other points on the Wabash at which this tariff is applicable. With this exception the provisions of this item, that the line haul rates apply to and from private tracks, team tracks, on industries located on our line, for loading or unloading, are applicable without restriction.

464 The other items shown in this exhibit are self-evident and it will be noted that the items under suspension are those from which was removed the special prohibition with re-

spect to the traffic to and from the A. E. Staley Manufacturing Company, as referred to in the tariff providing for the plus charge.

Q. Now, Mr. Richardson, I note that in connection with the first block on Page 1 of your exhibit No. 22, you show no date. Can you state approximately over how long a period that application has been in effect, I mean, before you incorporated that exception in there?

Mr. BURCHMORE. How long this has been the general rule?

Mr. STRASSER. Yes.

The WITNESS. Well, I have an exhibit that shows how long we maintained this general rule.

By Mr. STRASSER:

Q. All right, the purpose of this exhibit here is to contrast the present application with what you proposed in the tariff under suspension.

A. That is it.

Q. Now, what is your next exhibit. This will be Exhibit No. 23?

Com. PATTERSON. Yes.

(Exhibit 23, Witness Richardson, marked for identification.)

By Mr. STRASSER:

Q. Make any necessary explanation on that exhibit, Mr. Richardson.

A. In this exhibit we have shown a number of items in
465 our interstate tariffs applicable to Decatur, Illinois, and what we propose to do if suspended by the Interstate Commerce Commission under I&S Docket No. 4736. In each instance the item as now in effect provides for exception their application in their general rules contained in the interstate tariff on traffic to and from the A. E. Staley Manufacturing Company while other industries at Decatur using the same tariff are not subject to that exception and are not assessed the plus charge of $2.50 per car on interstate traffic placed at the point of unloading or received at the point of loading.

Q. Your next exhibit will be No. 24?

Com. PATTERSON. That is right.

(Exhibit 24, Witness Richardson, marked for identification.)

By Mr. STRASSER:

Q. You may make any necessary explanation of that exhibit.

A. In this exhibit we have reproduced the item providing for free switching on Wabash road haul traffic to and from private tracks, team tracks, or industries located on the lines of this company. We have gone back in our records as far as possible. It will be noted that the item now in effect, except for the note on

the traffic to and from the A. E. Staley Manufacturing Company, is substantially the same as was published and in effect on July 12, 1907, and remained continuously in effect until the order of the Commission in its 55th Supplemental Report, Ex Parte 104, Part 2, became effective.

466 On Page 2 a similar item is shown. It is applicable in the St. Louis-East St. Louis district. In this instance we have gone back as far as our records permit. It will be noted that this has been continuously in effect since November 5, 1907, and is now in effect.

On Page 3 a similar item is shown, which is applicable to Kansas City, and again we have gone back as far as our records are available, which shows that this item became effective on March 7, 1928.

Q. March 17?

A. March 17, 1928, and continues in effect at the present time. On Page 4 we have shown the application rates to and from points within the Chicago, Illinois, switching district. It will be noticed that the tariff in effect at Chicago on January 12, 1913, and in effect on January 22, 1914, as well as the present issue, provides that the Chicago, Illinois, rate to and from Chicago will apply to and from deliveries at points within the Chicago, Illinois, district as specifically provided for in another section of the tariff, and this permits the delivery or receipt of cars at the rates applicable to or from Chicago, Illinois.

This exhibit demonstrates that on traffic originating at or destined to industries located at points on the Wabash, the road haul rate applied covers the complete service, including the furnishing of the car, placing it at a proper point of

467 loading, transporting the loaded car from origin to destination, and making terminal delivery at the latter point. So far as I know this practice and policy obtains on every other railroad in the United States.

By Com. PATTERSON:

Q. Is it your opinion that no abuses have grown up with respect to free switching anywhere in the United States?

A. Well, that is a rather broad question, Mr. Commissioner.

Q. That is just what you just said.

A. I think that that is a matter that each individual railroad has to police.

Q. Then you modify your statement to that extent?

Mr. BURCHMORE. May the statement be read?

Com. PATTERSON. Read the last paragraph of his statement back.

(Record read.)

By Com. PATTERSON:

Q. Then I asked you the question, if you thought that no abuses had grown up with respect to free switching anywhere in the United States.

A. Well, I still say that that is a question that each line would necessarily have to police to protect their own interests.

Q. Including the Wabash Railway?

A. Including the Wabash Railway.

Com. PATTERSON. O. K. Off the record.

(Discussion outside the record.)

468 By Mr. STRASSER:

Q. Well, you would not undertake to answer on behalf of all railroads as to whether there had been any abuses or violations of their tariffs, would you?

A. No; I would not.

Q. What would you say as to the Wabash? Are you of the opinion that on the Wabash there are any abuses of this privilege?

A. Not that I am aware of.

By Mr. BURCHMORE:

Q. Have you had no complaints that there were?

A. I have had no complaints to that effect.

Com. PATTERSON. All right.

By Mr. STRASSER:

Q. All right, go ahead Mr. Richardson.

A. It has always been the practice for the railroads to fix their charge for the entire service thus described in a single item, which is termed the freight rate. Furthermore, the practice of establishing rates on group adjustment, which is quite generally followed, makes the situation at Decatur appear inconsistent. In other words, the rates to and from points in a certain group, determined by the carriers or by the Interstate Commerce Commission, are the same, and the sizes of the group depend a great deal on the length of the haul and other conditions obtained.

In every group adjustment, some points in the group are more favorably located than others and require less transportation service. However, something more than a disparity in the cost
469 to the amount of service performed for different shippers within the group is necessary to find that the rate group is unlawful. The situation at Decatur is no different. We have grouped industries at this point into one switching district. The transportation service performed by the carrier in connection with a carload of freight to or from each industry in this district may be different. It may be possible and even is quite probable

that the transportation service performed in connection with traffic to and from the plant of the A. E. Staley Manufacturing Company is less per unit than that which must be performed in connection with traffic to and from other industries in the Decatur group or switching industry.

The very nature of the business of modern transportation makes impossible absolute or even substantial uniformity. The order in Ex Parte 104 introduced into the business of railroad transportation an innovation and a departure from the practice that had been observed almost from the beginning of the transportation industry. That innovation was the introduction of the theory that the line haul rate or charge did not compensate the carrier for the delivery of a carload of freight to the place of unloading or the picking up of a loaded car to be forwarded from the place of loading.

In these days of intensive competition among railroads and between the railroads and other forms of transportation it is our opinion that the theory on which the Ex Parte 104 was
470 decided, that a separate terminal charge may be assessed and collected in addition to the road haul rate, is erroneous and wholly impractical and impossible of application.

Mr. LOVERING. Right there, please. Will you read that last sentence again?

The WITNESS. In these days of intensive competition among railroads and between the railroads and other forms of transportation, it is our opinion that the theory on which the Ex Parte 104 was decided, that a separate terminal charge may be assessed and collected in addition to the road haul rate, is erroneous and wholly impractical and impossible of application.

There is no question in our minds that the continued assessment of this charge against the A. E. Staley Manufacturing Company is unreasonable and unduly prejudicial to that company. Taking everything into consideration we respectfully submit that the Commission should, in the interest of consistency and fairness, modify its order so as to remove the necessity for the imposition of the terminal charge against the A. E. Staley Manufacturing Company.

By Mr. STRASSER:

Q. Now, Mr. Richardson, you have referred to the varying conclusions reached on this subject by the Interstate Commerce Commission and the Illinois Commerce Commission, as a result of which this $2.50 is being assessed and collected on interstate shipments and is not collected on Illinois state shipments. The Staley
471 Company from time to time has to construct new buildings and new facilities, is that correct?

A. That is correct.

Q. Recently they have constructed a very large new facility out there. Are you familiar with that?

A. Yes; I am.

Q. And in the construction of that facility a great deal of sand and gravel were used, is that correct?

A. That is correct.

Q. Now, what is the main point on the line of the Wabash that produces sand and gravel in this Eastern territory?

A. The only production, good production, of sand and gravel that we have got on our line that can serve this immediate territory around Decatur and Springfield is located at Attica, Indiana, just a stone's across the Illinois-Indiana state line.

Q. Yes.

A. And on that movement into Decatur to the plant of the A. E. Staley Manufacturing Company, there would be a charge of $2.50 per car in addition to the rate to Chicago, Illinois. However——

Mr. BURCHMORE. Not to Chicago.

The WITNESS. To Decatur, Illinois. However, if that sand and gravel would move from a pit in the line whose territory was located in the state of Illinois, for the same delivery at the A. E. Staley Manufacturing Company there would be no extra charge.

472 By Mr. STRASSER:

Q. Now, is a charge of $2.50 an important item on the transportation of rough material sand and gravel, a low-grade commodity?

A. It is a very substantial part of the price.

Q. Does the transportation charge constitute a very important item in determining whether sand and gravel will be produced at one location or another?

A. It does.

Q. And do you consider the imposition of this $2.50 charge on interstate shipments as a direct and severe burden on interstate transportation, so far as that commodity is concerned?

A. It does.

Com. PATTERSON. We will take a recess for ten minutes.

(A short recess was taken.)

Com. PATTERSON. All right, Mr. Richardson, you were reading a statement, were you?

The WITNESS. No, I——

By Mr. STRASSER:

Q. Mr. Richardson, there has been mentioned in this proceeding by various witnesses the fact that you have proceeded under the reciprocal switching rate in effect here. Is that uniform on all lines at Decatur?

A. That is uniform, to the best of my knowledge. The general charge is 14 cents a ton minimum $2.97 per car, maximum $5.45 per car.

Q. And is that very generally absorbed by a carrier that
473 has to reach a plant through a switching line?

A. That is generally absorbed.

Q. Now, if we bring in cars here for the Archer-Daniels-Midland Company, for example, we would have—we would turn that car over to the Illinois Central and pay it the reciprocal switching charge, is that correct?

A. We would, that is correct.

Q. And we would collect from the Archer-Daniels Company the road haul rate provided for by our tariff?

A. Yes.

Q. And the same is true of any other industry where we would employ another line to perform the reciprocal switching?

A. That is correct.

Q. And where we are the delivering line, that is, the switch line, we collect the charge?

A. Yes.

Mr. STRASSER. That is all.

Com. PATTERSON. Cross examine.

Mr. BURCHMORE. No questions at this moment.

Mr. STRASSER. Just one more question, if I may be permitted.

By Mr. STRASSER:

Q. Mr. Richardson, this sand and gravel illustration that I mentioned is not the only instance in which the imposition of this terminal charge would have a tendency to make it difficult for the Wabash to get traffic, is that correct?

474 A. Yes; in my opinion, that is generally correct.

Q. That was just one of the illustrations that might be given?

A. Yes.

Com. PATTERSON. If you are going into the sand and gravel business, if the Wabash did not get that switching charge for the sand and gravel, I presume they would be satisfied.

Mr. STRASSER. I don't quite follow you, Mr. Examiner.

Com. PATTERSON. When did this sand and gravel move?

Mr. STRASSER. During the last year.

Com. PATTERSON. And did the Wabash collect the switching charge for it?

Mr. STRASSER. It has not yet collected it but it is endeavoring to and we are having an awful fight about it. I will probably have to sue the construction company before they pay it.

Com. PATTERSON. Well, if it turns out that the Wabash don't get it, they will be perfectly satisfied, I presume?

Mr. STRASSER. Well, that depends upon what you mean by satisfied.

Mr. BURCHMORE. Contented.

Com. PATTERSON. Off the record.

(Discussion outside the record.)

Com. PATTERSON. All right, cross examine.

Mr. BURCHMORE. Well, there is no controversy with Staley about this, is there?

475 Mr. STRASSER. Oh, no; not with the Staley Company.

Mr. BURCHMORE. About this gravel?

Mr. STRASSER. The facts are that this contractor took delivery of this material on tracks within the plant, and, as we construe the tariff, his shipments are subject to this terminal charge. We have rendered bills and we have used every means of persuasion at our command to get payment, but the bills haven't ever been paid yet and I have put them on notice that suit will be instituted at an early date.

Com. PATTERSON. Now, with respect to the contractor, do you want to collect it?

Mr. STRASSER. Well, I have to collect it, under the law.

Com. PATTERSON. With respect to Staley, you don't want to collect it?

Mr. STRASSER. Well, no, you misunderstand me. We don't want to collect it from any of these people. We think it is wrong. But we feel that under the law we will be compelled to collect it, and in this instance we will be compelled to bring suit against a very valued patron, a thing we always regret to do; we put it off as long as possible.

Mr. BURCHMORE. You kind of think he is an innocent victim?

Mr. STRASSER. Yes; we do.

Cross-examination by Mr. LOVERING:

Q. Mr. Richardson, will the Wabash be satisfied with the
476 removal of this prejudice and discrimination which you feel exists with respect to the Staley Company?

A. It will be.

Q. Do you feel that the only way to do that is by the elimination of this spotting charge?

A. That is correct.

Q. Do you know whether the Wabash is making more money now under the present arrangement than it did under the old arrangement in existence prior to the initiation of this charge of $2.50.

Mr. STRASSER. Well, now, I don't know that that is a pertinent question. It might be that the Wabash is getting more money, but the other railroads have testified that they are getting less, so that one offsets the other.

Com. PATTERSON. Overruled.

Mr. BURCHMORE. There is this question about it, that we could go into. There is always the question of how much business may go to other modes of conveyance or may deter traffic and it may detract—you might save money by cutting off a salesman out on the road, you would save his salary but you would lose his sales. How much money have you saved when you let off a salesman? There are many angles to that.

Com. PATTERSON. Yes; it won't do any harm in the record. Answer the question.

Mr. LOVERING. Is it overruled?

Com. PATTERSON. Yes; his objection is overruled.

477 The WITNESS. Will you read the question?

(Question read.)

The WITNESS. I don't feel that it is a question of whether or not we are making more money now.

Com. PATTERSON. Can you answer the question?

Mr. STRASSER. Answer the question yes or no, whether you know.

The WITNESS. Yes, as I understand it, we are making more money now, but——

By Mr. LOVERING:

Q. It was testified here yesterday by one of the witnesses, I don't remember just who it was, that he thought it was costing his particular railroad somewhere around $50,000 a year, and what I was wondering is whether this money, for example, that his road is losing, is going into the treasury of the Wabash. Would that be your idea as to how the situation——

Mr. BURCHMORE. Which witness was that?

Mr. LOVERING. I beg your pardon?

Mr. BURCHMORE. Which witness was that, may I ask?

Mr. LOVERING. I think it was one of the Illinois Central's.

Mr. SMITH. It was Mr. Sheppard. No, it was Mr. Miles. We paid last year in switching absorption to the Wabash about $50,000 and that is the amount he referred to.

Com. PATTERSON. I think he said, Mr. Lovering, if they could make direct delivery, as they were physically equipped to do, they would save that much money, the Illinois Central.

478 Mr. SMITH. No, we would not save that much money. It was costing us something to make deliveries and we put in

the figures showing our cost at the time we were delivering to the Staley plant, plus the cost to the Wabash——

Com. PATTERSON. Well, you would save some money.

Mr. SMITH. We would save some money, yes.

Mr. STRASSER. Just off the record.

(Discussion outside the record.)

Mr. LOVERING. I take it, then, no further questions along that line are to go in?

Com. PATTERSON. Yes; let's hear what the question is.

Mr. LOVERING. I just want to ask Mr. Richardson if he could estimate approximately—if he can give an approximate estimate as to the benefit obtained by the Wabash in dollars and cents now, as compared with the years prior to the initiation of this charge?

The WITNESS. I cannot.

By Mr. LOVERING:

Q. If this arrangement is producing more money for the Wabash, as you just stated, is the removal of the unjust—the alleged unjust discrimination and undue prejudice—I will withdraw that question.

In view of the fact that the Wabash is making some more money out of it, why is the Wabash apparently desirous of doing away with that charge?

A. Because of the general effect. We don't think that is
479 a fair charge.

Com. PATTERSON. It is on moral grounds?

The WITNESS. Well, if you want to call it on moral grounds. It is making a charge against a volume of business where we don't make a charge against a much smaller volume of business. You are penalizing the man that does the most business. Why should you do—there is no justification for that.

Mr. BURCHMORE. Would you call it legal grounds, legal or illegal grounds, instead of moral?

Com. PATTERSON. Or both?

Mr. BURCHMORE. It seems to me, if it is indefensible, it is illegal rather than immoral.

By Mr. LOVERING:

Q. Do I understand, then——

Mr. STRASSER. Do you think we can agree on that? We will make it both.

By Mr. LOVERING:

Q. Do I understand from that, then, Mr. Richardson, that in order to remove what you consider to be this undue prejudice and discrimination, you are willing to sacrifice considerable money?

A. I don't consider it a sacrifice, because you have got to look to the future on matters of this kind.

Q. Well, so far as the practice is concerned, it would result in a sacrifice in money?

A. Why, it probably would for a year.

Q. Mr. Richardson, referring to Examiner King's pro-
480 posed report, did you examine that proposed report yourself?

A. Yes, I did.

Q. Did you try to determine in your own mind just what was intended by it or what the Examiner—what the report held?

A. The conclusion of the Examiner was to the effect——

Mr. STRASSER. No; answer the question. He asked you whether you did a certain thing. Read the question.

(Question read.)

The WITNESS. Yes.

By Mr. LOVERING:

Q. Were you able to determine from that report, from that examination you made, whether or not it would have the effect of shutting all roads out of the Staley plant except the Wabash?

Mr. LE FORGEE. Read that question, will you, please?

(Question read.)

By Mr. LE FORGEE:

Q. That is, your own opinion, based on your own examination.

A. That conclusion referred to Wabash haul rates to and from Decatur.

Q. You think it would have had the effect, if adopted, of shutting out all roads except the Wabash?

A. If that report was adopted by the Commission, it would have that effect.

Mr. STRASSER. Now, if the Examiner please, it seems to me that is asking for a legal conclusion.

481 Com. PATTERSON. It is asking for his opinion.

Mr. STRASSER. Yes, sir; that——

Com. PATTERSON. It is just his opinion.

Mr. STRASSER. All right.

Mr. LOVERING. It is just his opinion, Mr. Strasser.

Mr. BURCHMORE. Yes, I don't know what the importance is.

Mr. LE FORGEE. There would be many things that would have to be considered to determine whether the Wabash could do that or not; a good many elements enter into it.

Mr. BURCHMORE. Well, does that imply—if I may ask counsel—do you imply that there should have been a consideration by this complainant to such—the result of that report? You see, we accepted the report.

Mr. LOVERING. No, the only purpose of the question is finding out what he thought the effect of the opinion might be. He quoted from it and I just wanted to get his idea as to what it meant.

Mr. LE FORGEE. There are five railroads running into the city of Decatur, with the investment of many millions in this plant out here. Its product originates all in Iowa and Illinois and Missouri and Kansas. Do you suppose the Staley Company is going to sit quietly by and be denied the right of the service of those railroad companies in a normal, fair, nondiscriminatory manner?

Mr. LOVERING. I don't know what the Staley Company
482 would do.

Mr. LE FORGEE. I am asking.

Com. PATTERSON. Well, never mind asking him any questions. If you care to ask the witness, why, you can ask the witness.

Mr. LE FORGEE. I may do that, but I was assuming a knowledge on the part of counsel.

Mr. SMITH. I think I should state, as counsel for the Illinois Central, that we don't construe the report in any such fashion. We certainly did not construe the report in such a wholly impossible or impractical way as that.

Mr. LE FORGEE. All right.

Mr. BURCHMORE. If the Commissioner please, I have consulted the records of the Commission and consulted officers of the Commission regarding this case. We notified the Commission that we had no exceptions to take to Examiner King's report. Now, I would like to make this statement on the record: That when we made that we withdrew any request for oral argument, thinking the case would be promptly decided on that report. I think, in fairness to my client, I should call your attention to this: Instead of adopting that report, and that report was served on us by direction of the Commission with the idea that it would be helpful to give an opportunity to the parties to file exceptions, in a case which counsel for the Commission had actively participated in—but now all the Commission did was to reopen the
483 case and I was officially informed by the Commission that subsequent to Examiner King's report there was another proposed report prepared, which we never have seen and we do not know what was in it, and we have no idea as to whether exceptions might have been apropos or necessary, or, indeed as to what the conclusion was.

Com. PATTERSON. That was disposed of by reopening the case.

Mr. BURCHMORE. Yes, but now we have never been informed—and I have asked Mr. Lovering, and I have asked the officials of the Commission—we have never been informed what it was you

wanted to find out that induced you to reopen the case. Now, I want to say that Examiner King's report made no such impression on me and I thought it meant that if that report was adopted the five railroads would enjoy our traffic in and out of Decatur but we would not have to pay any plus charge over their regular rate that everybody else had, and we hadn't any idea it meant that the Wabash would get all of our traffic.

Com. PATTERSON. The witness referred to the report and quoted from the report and that is his opinion as a witness for the Wabash Railroad. Now, your opinion perhaps was something different.

Mr. BURCHMORE. Well, I wouldn't know just the importance of his opinion——

Com. PATTERSON. I wouldn't know, either.

Mr. BURCHMORE. (Continuing.) On that point.

484 Com. PATTERSON. As perhaps not giving traffic to any of the railroads from the Staley Company.

Mr. LOVERING. Mr. Commissioner, with respect to Mr. Burchmore's statement there, about asking as to the reason for reopening—was that what you said?

Mr. BURCHMORE. What it was the Commission wanted to find out about this case.

Mr. LOVERING. There was some little correspondence between us. I just simply stated it was covered by the Commission's orders, or words to that effect; I don't recall the exact words. I don't know anything further. I am willing to tell all of counsel here that I know nothing more about the reason for reopening this case than what was stated in the Commission's order.

Com. PATTERSON. Well, the case was reopened to give the Commission further information, if there was any further information.

Mr. BURCHMORE. But, Mr. Commissioner, isn't it a little unusual—here is counsel for the Commission here, as he assures me, and I know it is so, to assist in developing the facts, and he is unable to tell us and we are unable to get any information as to what facts it is that it is desired to develop that are not already in the record at the prior hearing, and this comes, sir, at the end of a great many months of intolerable delay that we have suffered here. I would like to direct your attention to the periods of delay before we get through.

485 Com. PATTERSON. Any further questions?

Mr. LOVERING. One more question, Mr. Commissioner.

By Mr. LOVERING:

Q. These tariffs that you have spoken of, Mr. Richardson, do they contemplate more than one free placement of car?

A. By that you mean the tariffs under suspension?

Q. At the Staley plant; the tariff establishing the $2.50 spotting charge, did that contemplate more than one free placement of car?

A. One free placement of car for the loading or unloading privilege.

Mr. LOVERING. Nothing else.

Com. PATTERSON. Any more questions?

Mr. GOEBEL. Yes. Since the Commission has permitted the witness to give his opinion as to the interpretation of the proposed report, I would like to ask you, Mr. Richardson, to point out to us any phrase or passage in that proposed report that sustains the conclusion that you have reached.

The WITNESS. Well, in that conclusion that has led me to that opinion, reference is made that the service may be performed by the Wabash on interstate shipments under its line haul rates, without additional charge.

By Mr. GOEBEL:

Q. That is the only word that you base your conclusion on, is the word "its" in the next to the last line of that report?

486 Com. PATTERSON. That would be Wabash traffic.

Mr. BURCHMORE. Mr. Commissioner, may I direct your attention to this: I observed that word "its", it seemed to me unfortunate, and before time for exceptions I called it to Examiner King's attention by a letter and asked what it meant, and so forth, and called attention to what it might mean, and he indicated to me that it was a slip that he had not intended and in the final report he would recommend that the word "its" be changed. He did not say what to. But your correspondence, sir, will reveal that we called the Commission's attention in that way, through the Chief Examiner, to the unfortunate meaning that might be attached to the word "its," and it was indicated that it would be directed to the Commission's attention as such.

By Mr. GOEBEL:

Q. Well, then, Mr. Richardson, summarizing the discussion, that is what you base your conclusion on that this proposed report excludes all except the Wabash, is by the use of the word "its" in the next to the last line of the report; is that right?

A. That is right. I had no idea, though, that that would be probably the final report.

By Com. PATTERSON:

Q. You thought you were building up a lot of false hopes for the Wabash?

A. No, not necessarily.

Com. PATTERSON. Well, I guess we have had enough of
487 this proposed report.

Mr. STRASSER. Mr. Examiner, aren't we rather wasting time here in trying to find out what a traffic man's legal opinion of a proposed report is that may never have any bearing on this case?

Com. PATTERSON. I think so.

Mr. STRASSER. Is that all of Mr. Richardson?

Com. PATTERSON. Yes; that is all.

(Witness excused.)

Mr. STRASSER. Call Mr. Curran.

CHARLES CURRAN was sworn and testified as follows:

Direct examination by Mr. STRASSER:

Q. Please state your name.

A. Charles Curran.

Q. Where do you reside?

A. Decatur, Illinois.

Q. How long have you lived in Decatur?

A. All my life.

Q. Are you in the employ of the Receivers of the Wabash Railway?

A. Yes, sir.

Q. In what capacity?

A. General Yard Master.

Q. How long have you been the General Yard Master at Decatur?

A. 14 years.

488 Q. And prior to that were you in the service of the railroad?

A. Yes, sir.

Q. The same railroad?

A. Yes, sir.

Q. State your railroad experience prior to the time you became General Yard Master.

A. I went to work for the Wabash Railway Company in 1901; I worked in the capacity of messenger boy, train crew caller, assistant yard master, general yard master.

Q. And all of that time you have been right here at Decatur?

A. Yes, sir.

Q. In other words, you can't by any term be called a boomer?

A. No, sir.

Q. Now, Mr. Curran, at the present time you have supervision of all switching operations of the Wabash within the Decatur district?

A. Yes, sir.

Q. And what is the extent of that district from east to west?
A. In mileage?
Q. Yes.
A. About four miles.
Q. Four miles; that constitutes what is called the switching district?
A. Yes, sir.
Q. And your crews deliver cars at industries and team
489 tracks and warehouses at any point within that territory?
A. Yes, sir.
Q. You are familiar with the operations at the Staley plant, are you?
A. Yes.
Mr. STRASSER. Just off the record.
(Discussion outside the record.)

By Mr. STRASSER:

Q. Well, that is true, is it not, Mr. Curran, that there have been some changes from time to time?
A. Yes, sir.
Q. Is it true that as mistakes or inefficiency are discovered, prompt steps are taken to rectify them, with the idea of producing as complete and smooth a switching operation as is possible?
A. Yes, sir.
Q. And there have been some changes from time to time, some minor and some what might be of more importance?
A. Yes, sir.
Q. Since the case was formerly heard?
A. Yes, sir.
Q. All right; you may proceed, then, and state just how cars brought in on road haul service by the Wabash and destined to the Staley plant are handled by your crew.
A. All in-bound loads arriving for the A. E. Staley Company, both in trains and from interchange connections, are placed
490 into the Staley yard from the east end, in the vicinity of Brush College. These loads are delivered into the Burwell Yard.
Com. PATTERSON. Well, let's start from the time the train——
Mr. STRASSER. From the time the train is broken up; yes.
Com. PATTERSON. From the time the train arrives in town, from the time your line haul train arrives.

By Com. PATTERSON:

Q. Where does that train come into the Wabash yard?
A. The train comes into the Wabash yard, is switched, and the cars classified.
Q. Where do they come into the Wabash yard?

A. We have four places where they might come in, one in the east-bound yard, entering at the entrance of Brush College, one in the west-bound storage yard, Old Moser's Road, and the east-bound yard at the west end of the yard, and the east-bound storage yard in the vicinity of Jasper Street, the ice-house yard in the vicinity of Jasper Street.

Mr. STRASSER. It has been suggested that the witness indicate the various points that he has mentioned in his testimony. I think he can do that very readily, by marking them on the map.

Mr. LE FORGEE. For information, which is east and west?

The WITNESS. This is east [indicating]. This is Brush
491 College——

Com. PATTERSON. Give it to the stenographer so she can understand it.

Mr. STRASSER. This is Exhibit 2, you know.

The WITNESS. In connection with Exhibit 2, trains head in at the east end of the east-bound yard at Brush College. Trains also head in at the west end of the east-bound yard in the vicinity of 22nd Street. Trains head in at the old west-bound storage yard in the vicinity of Old Moser's Road.

Mr. LOVERING. Is that road shown on that map?

The WITNESS. There is a cross road over these main tracks. Here is the cross road [indicating].

Mr. BURCHMORE. That is north of the Staley elevators?

Com. PATTERSON. It is shown on the map.

The WITNESS. Trains head in at Jasper Street in the old east-bound storage yard. That is here [indicating]. Trains head in at Jasper Street at the east-bound storage yard, come through No. 6 as a lead into the ice house.

Com. PATTERSON. Then explain what happens to these cars after they are taken out of the train and put together for movement to the Staley plant.

The WITNESS. Trains are classified, switched—the cars are classified as to direction, east, south, or west, Decatur loads. Staley cars are switched to the east end of Burwell Yard.

492 By Com. PATTERSON:

Q. Is this the Burwell Yard——

A. Right.

Q. The yard that includes the tracks that were leased from the Staley Company?

A. Yes, sir. The cars are taken to that yard; the last cars are placed on No. 1.

Com. PATTERSON. In the Burwell.

By Mr. STRASSER:

Q. These cars are numbered from the south or from the north?

A. Numbered from the north.

Q. The first track would be the most northerly track?

A. The last cars are placed in No. 1. The grain arriving on the Wabash is placed on the inspection track, which is directly north of Burwell No. 1. All other Staley cars are placed on No. 1, as I told you before.

By Com. PATTERSON:

Q. Then that is all done by the engine that breaks up the train?

A. Yes, sir—no; it is done by the engine at the east end of the east-bound yard after the cars have been brought to that yard or arrived in that yard.

Q. After the train is broken up. Then, after the train is broken up, another engine gets the cars and places them over to the Burwell Yard; is that correct?

A. The engine working at the east end if the east-bound yard does that.

493 Q. Yes.

A. But on account of the trains arriving in different parts of the yard, we don't have access to the Burwell Yard at the west end of it.

Q. That is, the road trains don't pull into the Burwell Yard?

A. No; we don't have easy access to the west end of the Burwell Yard without some interference of backing up, and so forth, so the flow of the traffic is into the east end of the Burwell Yard.

Q. Then, after he shoves these cars into the Burwell Yard, what becomes of that engine? He goes back to the east end of the yard to work?

A. He takes care of his switching.

Q. Yes; he goes back to the yard. Then what happens to these cars?

A. The cars are checked by our yard clerks.

Q. In the Burwell Yard?

A. In the Burwell Yard. Checks are furnished to the clerks at the scale house, who work under the agent. They check up the checks, give them to our yard foreman, and switch those checks, place the cars according to where they belong.

Q. What engine does that?

A. There is an engine working in the Staley plant that does it.

Q. He comes out of the plant and gets them?

A. Yes; he works in and out of the Staley plant.

494 Q. Yes; mostly in, isn't it, during the time he is there, except to come out and get——

A. The Burwell Yard, we call that out. He switches in the Burwell Yard, to haul that out.

Q. But that was formerly the Staley Yard?
A. Formerly was; yes.
Q. You leased a part of that yard?
A. Yes.
Q. Are you familiar with the terms of that lease?
A. No, sir.
Mr. BURCHMORE. It is in evidence.
Com. PATTERSON. Will you have a witness who is familiar with the terms of the lease?
Mr. BURCHMORE. Well, we have the lease before us.
Com. PATTERSON. Well, I want to ask him some questions about it.
Mr. BURCHMORE. I will give it to you right now.
Mr. STRASSER. Let's not interrupt the witness' testimony here about the handling of these cars. Let's get that down on the record first before we start on the lease.

By Com. PATTERSON:

Q. Now, when this engine that works in the east end of the classification yard starts over to the Burwell Yard with a cut of cars, how long does it take before those cars are set for unloading, ultimately?

A. Well, we try and clear the track every day, two and
495 three times, keep drawing from it all the time.

Q. You keep drawing from the Burwell Yard?
A. Yes.
Q. As this engine comes out and collects them?
A. Yes, sir.
Q. And from the time the cars leave the classification yard until they are placed for unloading, that may be any time from 1 to 24 hours, is that correct?
A. Yes, sir.
Q. Is there any other service performed with these cars en route from the classification yard to the Staley plant, such as weighing them or inspecting them or anything of that sort?
A. Nothing, only the inspection of the grain.
Q. Now, where is that grain inspection made?
A. The grain inspection of cars of grain that arrive on the Wabash is made on the federal grain inspection track directly north of No. 1 Burwell, on which track we place only A. E. Staley's grain, due to the volume of the amount of grain that that company receives.
Q. Is that inspection always made there, or is it sometimes made in the plant?
A. It is made there by the federal grain inspectors.

Q. Always?

A. Yes, sir! as far as I know.

Q. Now, what is the situation with respect to the loads
496 coming out, the reverse movement?

A. The out-bound loads all go out at the west end of the A. E. Staley Company gate.

Q. And are placed by the engine that works——

A. That is farther down, that is the west end of the Burwell Yard there; it is way down.

Q. All the outbound loads——

A. The finished products all come out there.

Q. All come out—what is that?

Mr. STRASSER. Jasper Street.

By Com. PATTERSON:

Q. Near Jasper Street?

A. Yes, sir.

Q. Where do they go to from there, into the classification yard?

A. Well, we deliver them to the different connections, including ours.

Q. Well, do you deliver them direct from the Staley plant or do you take them into the classification yard?

A. We take them into the classification yard if there are no no-bill cars. They go to the classification yard if they are billed.

Q. Then you take cars out of the Staley plant before they are billed?

A. Yes, sir; if they are not billed, take them out, get them out of the way as a matter of our own convenience, to make room.

Q. However, you take them, for whatever reason?

497 A. Yes, sir.

Q. How long do these no-bill cars lay around there before you finally get a billing on them?

A. Well, they vary sometimes. It depends on whether or not they have got the billing. If they don't have the billing on them they will lay there until they do and the car goes on demurrage.

Q. How long is the longest one that you can remember right handy that was in there?

A. Well, I don't recall right now.

Q. A month?

A. I don't remember of any of them laying there a month, but I don't check the track. We have a clerk that can tell you that.

Q. Will that clerk be produced who can give us that information?

Mr. BURCHMORE. Mr. Commissioner, I would like the man to say if he remembers or if he knows of or remembers any no-bill cars, because all the cars—our witnesses testified that all the cars are

billed, that the bills of lading are furnished the railroads before any railroad engine comes near them, so I don't think there is such a thing. If there is, we would like to know it.

The WITNESS. Yes; there is such a thing.

Com. PATTERSON. That is what I am trying to find out myself. He says there is such a thing.

By Exam. WEAVER:

498 Q. The cars for which there are no bills are placed in the yard south of the locomotive shops?

A. Yes; directly north of the A. E. Staley Company, which we term as our east-bound storage yard.

By Mr. STRASSER:

Q. The Staley Company doesn't give you any orders to move those cars out there until they are billed, does it?

A. No.

Com. PATTERSON. No; he just moves them out.

By Exam. WEAVER:

Q. Well, if you didn't move them out, would you be able to perform the service within the plant, if you did not move them? You must have a reason.

A. The flexible movement requires us to take them out. They might load them in the morning and bill them in the afternoon, but we take them out.

By Com. PATTERSON:

Q. They might not bill them that day at all?

A. They might not.

Q. And after you get them over in the classification yard, I presume you reclassify these cars to their destination, that is, those that are going to these various interchange tracks or those that are going out on your road haul—line haul trains?

A. Yes, sir.

Q. Now, with respect to these leased tracks, the Burwell Yard do you call that?

A. Burwell.

499 Q. Is the operation in the Burwell Yard, so far as you are concerned, any different now than it was before you leased those tracks?

A. Yes, it is different now.

Q. In what respect?

A. Well, we sometimes make up trains in there.

Q. What trains, way freights?

A. Way freights, through trains.

Q. You always had the privilege of doing that in the Burwell Yard, did you not, under the terms of the standard railroad lease?

A. Well, we did not have the privilege of doing that until they were leased.

Q. I see.

By Exam. WEAVER:

Q. Are the trains that you make up in that yard—do they consist entirely of Staley traffic?

A. No; when we get crowded in the east-bound yard proper we will make up trains for out-bound movement in the Burwell Yard.

By Com. PATTERSON:

Q. How long are those tracks in the Burwell Yard?

A. 55 cars.

Q. Do you have many trains of less than 55 cars?

Mr. BURWELL. Each track is 55 cars.

Com. PATTERSON. I understand.

The WITNESS. I would say 55 cars.

500 By Com. PATTERSON:

Q. But you try to make them up on one track?

A. Yes; as near as possible; but if it takes two tracks we will use two of them.

Q. Just how many trains a day do you make-up in the Burwell Yard?

A. Well——

Q. When did you make up the last train there?

A. The last train was made up there, as I recall it, about a month ago.

Q. About a month ago?

A. It is mostly in heavy traffic, is when we use it.

Com. PATTERSON. That is all.

By Exam. WEAVER:

Q. Well, when that yard is being used to make up trains, where do you place Staley traffic?

A. The same place.

Com. PATTERSON. It doesn't happen only once a month, or such a matter.

By Mr. STRASSER:

Q. How about empties, how are they handled in and about the yard?

A. Empty cars for the A. E. Staley Manufacturing Company, for out-bound loading, are placed on No. 1 in the east-bound storage yard, which is located west of the 22nd Street Viaduct.

Q. And from there they are placed at the various points which you mentioned?

501 A. From there they are taken into the A. E. Staley plant at the west end and placed at the various places that they are needed for loading.

Q. Now, how about the removal of cars that have been unloaded?

A. Cars that have been unloaded in the Staley plant proper are taken out at the west gate in the vicinity of Jasper Street. Cars that are unloaded at Plant "C" elevator are taken off of the elevator tracks towards the east and taken over into our yard for movement, either line haul or interchange.

Mr. STRASSER. I believe the record sufficiently shows the points of interchange with the various roads, that the cars are received and delivered.

Com. PATTERSON. I think so.

By Com. PATTERSON:

Q. Now, the length of time from the time that cars leave the Staley plant until they are finally dispatched from Decatur, is that about the same length of time that it takes the cars to get from the classification yards into the plant for spotting?

A. Well, cars that we get the billing on in the morning will depart in our trains leaving at seven to nine p. m. and will be delivered to connections between 12:30 p. m. and 4:00 p. m.

Q. And they are feeding out of the yard all the time?

A. All the time; yes.

By Mr. STRASSER:

Q. Mr. Curran, it is true, is it not, that by far the predom-
502 inating volume of cars loaded in the plant are billed before they are removed from the plant?

A. A great many of them are; yes.

Q. Now, how many spotting points are there within the Staley plant, where cars are spotted?

A. There are 18 points.

Q. Are spots made at practically all of those at very frequent intervals or are there some that receive more traffic than the others?

A. Some receive more traffic than others. As I recall, there is about 11 major points.

By Com. PATTERSON:

Q. Well, have those number of tracks been increased lately?

A. These are just points he is talking about; not tracks.

Mr. STRASSER. I am talking about the points at which cars are placed along the various track houses and elevators, and so forth.

By Com. PATTERSON:

Q. That includes some points where you have to get cars switched to get them into proper spotting locations?

Mr. BURCHMORE. (to the Reporter): Will you read that question?

(Question read.)

Mr. BURCHMORE. I just want to direct your attention to your question there. I don't quite know what it means, but here
503 again is a track that will hold ten cars, and there is a car puller and the Staley Company, with the car puller, pulls cars onto that track where they have to be.

Com. PATTERSON. No, my question goes to the point that he says there are more points where cars are spotted than there are tracks.

Mr. BURCHMORE. Why, sure; some tracks held 20 cars.

Com. PATTERSON. That is right; some tracks may hold 30 cars.

Mr. BURCHMORE. That is right.

Com. PATTERSON. Now, then, in order to get a car at the proper location or track, he may have to pull the track and put the car in behind a certain number of cars already in on the track. Now, is that true?

The WITNESS. What I meant was, that there are that many points where we set cars, but that doesn't mean there is just that many tracks there. For instance, at Plant "C" elevator there are four in-bound tracks and four out-bound tracks.

By Com. PATTERSON:

Q. Well, are there any of those tracks where you have to pull the track to get the car at the proper location for unloading, you have to cut it in behind cars that are already there?

A. Oh, yes.

By Mr. BURCHMORE:

Q. Will you just name one place, because I would like to know where that is?

Com. PATTERSON. Well, you can cross-examine.

504 Mr. BURCHMORE. I know, but, Mr. Commissioner, I don't think you and the witness quite understand the same thing.

Com. PATTERSON. I think the witness understands me all right. We both talk the same language.

Mr. BURCHMORE. I want to find out what is wrong here, and, if it is a fact, I would like to know it.

Com. PATTERSON. I am not saying it is wrong.

Mr. BURCHMORE. Will he tell us, please, where they have to pull off some cars and put some others in behind it?

Com. PATTERSON. All right, tell him.

The WITNESS. 5–B.

By Mr. BURCHMORE:

Q. Where is that on the map or something?

A. 17 Building.

Q. 17 Building?
A. 6–B.
Exam. WEAVER. 6–B Building.
Mr. BURCHMORE. All right, that is enough. We will identify it.
Com. PATTERSON. Off the record.
(Discussion outside the record.)
Mr. STRASSER. Now, so that we are all talking about the same thing and the witness isn't confused as to just what the question is——.
The WITNESS. I am not confused.
Com. PATTERSON. He is not confused; the attorneys are
505 confused.
Mr. STRASSER. I will admit that after listening to the Examiner and the other attorneys, I am somewhat confused. I would like to have that question read to the witness and also his answer, and to be sure that is what he intended to say.
Mr. BURCHMORE. Well, could we clarify it by asking him to point out where 17 Building is and 17 track.
Mr. STRASSER. All right, let's have the exact operation.

By Mr. BURCHMORE:

Q. Where is 17, can you point it out on the map?

By Com. PATTERSON:

Q. Yes; where is that located on the map?
A. Does it show these buildings? Here it is; here is 17 [indicating on map.]
Mr. BURCHMORE. That is the syrup sugar house.
Com PATTERSON. It is the syrup sugar house.
Mr. BURCHMORE. I will show you an exhibit——
Mr. LE FORGEE. Wait; I want the record to show whether he has located it or not.
Com. PATTERSON. Well, if we can't get this thing straightened out we will put some men in the plant and we will find out what is down there.
Mr. LE FORGEE. This witness is on the stand and he is testifying—he went over there to pick out plant 17. I was curious to know whether he found it or not.
Com PATTERSON. He did.
506 Mr. LE FORGEE. All right.
Mr. BURCHMORE. I think that track is shown in a larger pattern in the map Exhibit 7 already in this record, that shows Building No. 17.

By Mr. BURCHMORE:

Q. Is that the same building you meant [indicating]?
A. Yes, sir.

Q. The syrup and sugar house?
A. Yes, sir.
Mr. BURCHMORE. Now, we know what he is talking about.
Com. PATTERSON. That is right.

By Com. PATTERSON:

Q. Now, Mr. Curran, is that true with respect to any other tracks within the Staley plant?
A. You mean, switch out a car and put the rest back?
Q. Where you may have to cut cars in?
A. Yes; we have that at other places.
Com. PATTERSON. All right, go ahead.

By Mr. STRASSER:

Q. Well, now, you say that the preponderating volume of loaded cars are placed at 11 locations and at the other 7 locations you only have occasional placements to make?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Now, you are also familiar with the placement service or switching service that is accorded to other industries in
507 the city of Decatur within the switching district?
A. Yes, sir.
Q. Can you state what they are? Do you have a list of them?
A. Yes, sir.
Q. Please state what they are.
A. They are in the neighbor—52; 52 industries.
Q. And do any of these have more than one place at which cars are placed for loading and unloading?

By Com. PATTERSON:

Q. Is that 52 industries that are served by the Wabash?
A. Yes, sir.

By Mr. STRASSER:

Q. That is what you meant to say, was it?
A. Yes, sir; what was the question?
Mr. STRASSER. (to the Reporter): Read the question.
(Question read.)
The WITNESS. Yes, sir.

By Mr. STRASSER:

Q. State what they are.
A. The industries?
Q. Yes; the industries that have more than one place of loading or unloading where cars are spotted.
A. Spencer Kellogg, Mississippi Valley——
Q. How many has the Spencer Kellogg?

A. They have three that we have access to.

Q. All right.

A. Mississippi Valley; five.

508 Q. Mississippi Valley Structural Iron Company?

A. Five tracks. Wagner Malleable Iron Company, three tracks; Chambers, Bering & Quinlan Company, two tracks; Lyon & Son Lumber Company, two tracks; Standard Oil Company, one track, four spots; Metzler & Sons, one track, five spots; Decatur Milling Company, three tracks; H. Mueller Manufacturing Company, three tracks, seven spots; Fuller Ice Company, three tracks, four spots.

Q. Now, are there—well, I will ask you first whether at the Staley Company you have to spot cars at an exact location for unloading or do you just put them in on the track and the Staley Company pulls them up with his car puller as needed?

A. In some places they place them in the exact location and at other points they use car pullers, six different points.

Q. The greatest number of cars, however are handled by their car pullers?

A. Yes, sir.

Q. Now, at these other industries where you have shown that there is more than one spotting point, are there any of those where you have to make an exact spot?

A. Most all of them, with the exception of Spencer Kellogg, Decatur Milling——

Com. PATTERSON. Now, with respect to these tracks that are equipped with car pullers, isn't the car puller used to make the second and subsequent spots of these cars?

509 Mr. STRASSER. Well, but you don't have to spot each particular car, as I understand it, you put in four or five cars, shove them in on the track and cut loose and leave them there?

Com. PATTERSON. Well, the original spot, the first spot, is made with a locomotive; isn't that true?

The WITNESS. Yes, sir.

Com. PATTERSON. That is right.

Mr. STRASSER. But not at any exact point.

Com. PATTERSON. Oh, yes; at an exact point.

Mr. BURCHMORE. No.

Mr. STRASSER. No; I understand not.

Com. PATTERSON. Well, let the yardmaster answer that question.

Mr. STRASSER. All right.

The WITNESS. Well. for instance, do you want an example?

Com. PATTERSON. Yes.

The WITNESS. We spot 65 or 70 loads of grain at track "C" and go away and leave it.

Com. PATTERSON. Yes; the first car is where they are going to unload, isn't it, or is it?

The WITNESS. Yes, sir.

Com. PATTERSON. Sure; the second and subsequent spots are made with the car pullers.

Mr. BURCHMORE. Sure; we do that.

510 Com. PATTERSON. That is what I would do if I was a yard-master.

Mr. BURCHMORE. Sure; we were thinking of a second spot for a car.

Com. PATTERSON. Oh, no; the whole cut is spotted at once.

Mr. BURCHMORE. But that first car is not necessarily open, the aperture of the car opening against a spout.

Com. PATTERSON. It might not be.

Mr. BURCHMORE. It isn't, as a point of fact. I mean, it is accidental if it is.

Com. PATTERSON. That is with respect to tracks that have car pullers; that is not true with respect to other tracks. How many of these tracks have car pullers as compared with the total number of tracks in the plant?

Mr. STRASSER. Well, now, are you talking about the total number of cars in plant or the total number of tracks in the plant or the total number of tracks at which unloading is performed?

Com. PATTERSON. What I am trying to find out now is, how many unloading tracks are equipped with car pullers.

Mr. STRASSER. Well, that is all right, let the witness answer.

The WITNESS. There are car pullers located at track "C". At that point there is a battery of car pullers, a lot of them.

By Com. PATTERSON:

Q. How many tracks?

511 A. Seven tracks. There are car pullers located at plant "A," two of them.

Q. Two tracks?

A. Two car pullers.

Q. How many tracks?

A. A track on each side of the building.

Q. Two tracks. If you had a train of 60 cars, it might take a battery of car pullers to get them started, wouldn't it?

A. I meant by that, a car puller on each track.

Q. Yes.

A. Feed loading house, a car puller.

Q. How many tracks?
A. One.
Mr. BURCHMORE. These are cable car pullers, not——
Com. PATTERSON. I know what they are.
The WITNESS. Coal dock at plant "B."

By Com. PATTERSON:

Q. How many tracks at the coal dock?
A. There are a cinder track and two coal tracks.
Q. Three tracks?
A. Three.
Q. Car pullers there?
A. Yes, sir.

By Mr. BURCHMORE:

Q. The soybean plant, did you mention that?
A. Plant "B"; that is the soybean track.

By Com. PATTERSON:

512 Q. Do these car pullers reach the full length of each track in which they are installed?
A. They reach a certain number of cars and then we have to shove in more cars.
Q. Then you have to shove up to the car puller?
A. Yes, sir.
Com. PATTERSON. That is all.

By Mr. STRASSER:

Q. Now, at these other plants, other than Staley——
Mr. BURCHMORE. You mean other companies, other patrons?
Mr. STRASSER. Yes; these other plants he has testified about.

By Mr. STRASSER (continuing):

Q. Do you have to make exact spots before cars can be unloaded, I mean, place them at some particular door or other location?
A. In connection with the car puller?
Q. No; no; without a car puller, with your switch engine?
A. Oh, yes; we place them at doors.
Q. How about Metzler & Sons, what is the situation there?
A. Metzler & Sons, they have a platform, holds five cars; got a paved driveway, holds one car, that is the limit.
Q. Well, suppose you get car placed at the wrong door there, what happens?
A. We change it for them and put it at the right door.
Q. He can't make that change himself, you have to go back and do it?
513 A. Yes, sir; we have to do it.

By Com. PATTERSON:

Q. That would be true with anything you did wrong, wouldn't it, you would have to go back to fix it?

Mr. STRASSER. The point I am making is that this is a more exact service, required at other plants, than he has to perform at Staley placements.

By Mr. STRASSER:

Q. That is true, is it not, Mr. Curran?

A. Yes, sir.

Q. Generally speaking, at all of these other points, you have to exercise greater care and take more time per car?

A. Yes, sir.

Q. In getting the car at the exact place where it is to be unloaded, is that correct?

A. Yes, sir.

Q. You don't have to do that at the Staley plant?

Com. PATTERSON. You mean it takes more time to spot a car at one of the other plants than it does at Staley's?

Mr. STRASSER. Well, now, I am going to develop that, Mr. Examiner. I wish you would let me develop it in my own way.

Com. PATTERSON. Very well.

Mr. STRASSER. I am going to prove that very thing.

By Mr. STRASSER:

Q. Now, assuming you have on a particular day 50 cars of various commodities for the Staley Company and 50 cars to be stopped among all of these other 52 industries you have here
514 at Decatur, which service would require the most time and most service?

A. Placing the 50 cars to the other industries would take the most time.

Q. Would you say that the Staley cars, the service required in connection with the Staley cars, could be performed in a very substantially shorter time than the place of 50 cars at the other industries?

A. Yes, sir.

Q. Now, why is that?

A. Well, at the Staley Company we haven't got anybody to bother us; we are there all by ourselves.

Q. You can go in there, perform the work, and get out?

A. Yes, sir. But at these other industries we have got street crossings, our own traffic to look out for, and, due to the fact that we have long tracks, there are many shippers located on the same track. Consequently, it will take you a longer time.

Q. And the time of the switch crews is one of the most important elements in determining the cost of the service, is that correct?

A. Yes, sir.

Q. Now, do you have team tracks at which you place cars for loading?

A. Yes, sir.

Q. Where are they located and what is the capacity of them?

A. One located at Mercer Street, four car capacity; one
515 located at Church Street, south of the main tracks, ten-car capacity; two located at the freight house, north of the freight house, one of them holds ten cars and the other holds about fifteen.

Q. Those are in daily use, are they, and there are people who unload freight there?

A. Yes, sir; they are there to be used.

Q. Suppose you had on this same day that I questioned about, this supposed day on which you had 50 cars for Staley and 50 for other industries, you also had cars to place on these various team tracks, how would the service required in servicing those team tracks compare with the time required for placing an equal number of cars in the Staley plant?

A. Well, it would also take a little more time to place them on the team tracks, because there is more or less work going on there in those team tracks, and we don't like to disturb the main team tracks during the day but we will, if necessary.

Q. If you had other cars previously placed on the team track, men might be unloading freight when you come to place additional cars; is that correct?

A. Yes, sir.

Q. And in that event the crew would have to first ascertain whether the way was clear before they would put other cars in?

A. Yes, sir.

Q. It might be necessary to move the cars that had previously been made empty and shove in and set up the track again
516 after you got through switching the additional cars; is that correct?

A. Yes; if they had emptied some of the cars and we had more for them.

By Com. PATTERSON:

Q. Do you mean by that that you cut cars in on the team track?

A. Well, if——

Q. If you have got room at the entering end?

A. Well, we would have if the man had his cars down at a certain place; if he requested them in the middle of the team track or near a busy street.

Q. If he requested them?
A. Yes.
Q. But you don't feel under any obligation to do it?
A. Oh, no.
Mr. BURCHMORE. You never refuse, do you?
The WITNESS. No.
Com. PATTERSON. Well, he would not be under any obligation to do it; he could stick them in on any track.
The WITNESS. That is right.
Mr. BURCHMORE. I don't understand that it is an obligation of the railroad; it is something the railroad wants done for its customer, just like a merchant wants to do things for his customers.
Com. PATTERSON. I know, but this witness doesn't represent all railroads. Generally, they shove them in on the
517 team track.
Mr. BURCHMORE. I disagree with you. There is abundant evidence in this case that the general practice of railroads, wherever there is any occasion at all for placing cars on team tracks, is to spot them at a particular part of the team track. They do it naturally and without any dicussion of their obligation. There is an abundance of such evidence which we can cite in this record.
Mr. STRASSER. We are trying to submit our evidence in line with practical business transactions and not on any fine-spun theory or proposition of what a perfect thing might be. We have to do business under the conditions that confront us.

By Mr. STRASSER:

Q. Now, Mr. Curran, you would say, then, that placing car for car on these team tracks would involve more service and more time than placing an equal number of cars at the Staley plant?
A. I would say it would; yes.
Q. Now, what do you find as to the condition of the tracks in the Staley plant and at other industries where you make switches? Are they maintained on an equal standard, better or worse, than you encounter at other industries?
A. In my observation, tracks at the A. E. Staley Manufacturing Company, throughout the entire yard are above reproach in regard to conditions.
Q. You mean by that that they are maintained on a high
518 standard of maintenance?
A. Yes, sir.
Q. And that is not universally true, is it, with respect to other industries?
A. No; I can't say that it is.

Q. I would not want you to point out any particular industry, but generally speaking that is true, is it not?

A. Yes.

Q. Now, taking up loaded cars, would you say that the same thing is true, that it requires more time and service in taking up loaded cars, out-bound cars, at team tracks and other industries than it does to pick up an equal number of cars at the Staley plant?

A. It does, for the reason that our industries are located along our main tracks and we have the traffic interference in doing that work that we do not have in the Staley plant.

Q. Now, the present plan of operation at the Staley plant, do you regard that as highly efficient and smooth in operation?

A. Yes.

Q. Would you say it is better than it has been at any other time previously within your knowledge?

A. Yes.

By Com. PATTERSON:

Q. That is, since you took control of it?

A. Yes, sir.

Mr. BURCHMORE. That is admitted.

519 Com. PATTERSON. That is admitted.

By Mr. STRASSER:

Q. How long have these crews that are now servicing the Staley plant been assigned to that work? What I mean to get at is this: I don't mean the exact time they have been there, but are they assigned to that work and do they know the plant better than if you had different crews going in there doing the work from time to time?

A. How long have they been assigned?

Q. Yes.

A. Since June 25, 1936.

Q. The same crew?

A. No; the crews have been assigned that long. They change in accordance with the seniority of the men.

Q. Well, Wabash crews?

A. Wabash crews.

By Com. PATTERSON:

Q. Well, the same men stay there pretty much, don't they?

A. Well, they do, yes; and work in and out of there.

Q. How many crews are assigned to that work in the Staley plant?

A. Three continuous at the present time.

Q. That is a 24-hour service?
A. That is it.
Q. Amounts to that?
A. Yes, sir.

Mr. STRASSER. I think that is all.

520 Mr. BURCHMORE. May I ask a question or two along that line?

Com. PATTERSON. How long is it going to take to cross examine this witness? It is getting pretty close to lunch time.

Mr. BURCHMORE. I can take a few minutes with him now. Then I want to make a request after lunch.

Com. PATTERSON. All right.

Cross-examination by Mr. BURCHMORE:

Q. You spoke of the number of the crews that are in there and the time they are in there. Is there anything about the manufacturing processes of the soybean and corn products plant of Staley that requires their constant service day and night, or is it the volume of their business?

A. The volume of their business.

Q. Would you like to have a few more of those industries here work up their business to a point where you had to work at their plants a good many hours a day?

A. Yes, sir.

Q. Now, in your testimony, you spoke of Building No. 17, and I think perhaps I did not understand what you were saying about it. Here is Exhibit No. 7, which shows in a large scale the syrup and sugar house, with the track on each side of it and they are shown in their relation to the other tracks in the plant on the map, Exhibit 2. What is it you do with regard to cars at the syrup and sugar house, Building No. 17?

521 A. I was asked if we ever went into any track in the plant and switched out a car, and I told him yes; and he asked me where, and I told him at No. 17 Building. I just picked that out as an example.

By Com. PATTERSON:

Q. Yes; and there are many others, you said?

A. Yes.

Mr. BURCHMORE. May we get just that one before we get any others, because maybe we have one other and maybe two others.

Mr. STRASSER. We didn't understand the witness to say there were many others.

Mr. BURCHMORE. Well, let's get this one before we get a crowd here.

By Mr. BURCHMORE:

Q. At this particular track, as I understand, it is a straight track or more than one track passing the building?

A. This one is a stub, right there [indicating]; this one is through.

Q. I understand on that stub track you sometimes pull out cars in order to get the cars beyond, and then replace those that you pull out?

A. To set another one.

Q. Yes; that is what you are speaking of?

A. Yes; that is the way we do. That is just a common operation.

522 Q. Well, is it a common operation at all plants that you serve?

A. Sure.

Q. As I understand the Commissioner's question, that started this whole perturbation on my part, was whether you would count that as one unloading location or count it as four or five unloading locations?

A. I would count 17 Building as one location. There are tracks on each side of it.

Q. Yes; and yet at that one loading location you sometimes go in and get certain cars, pulling them out to get at cars beyond?

A. We are liable to do that.

Q. That is a characteristic condition of tracks generally in Decatur, isn't it?

A. Yes.

Q. To do that very thing?

A. Yes, sir.

Q. Well, now——

Com. PATTERSON. It isn't a question there, Mr. Burchmore, of sometimes; that is a common practice.

Mr. BURCHMORE. Everywhere; yes.

Com. PATTERSON. That is right.

Mr. BURCHMORE. Sure.

Com. PATTERSON. Here as well as other places after they finally get here.

523 Mr. BURCHMORE. Yes; but this isn't way off somewhere that they go out into the woods to find a car of freight; it is a place that presents them with a great volume of business in a small area.

By Mr. BURCHMORE:

Q. Now, you say there are other locations at the plant. Would you give us—you said 6–B, is that the same sort of thing?

A. Yes, sir.

Q. And what building is 6–B?

A. I said at 6–B, 20 Building, is what I said.

Q. Oh, 6–B, 20 Building?

A. Yes.

Q. That is at the starch building. Is that a stub-end track?

A. No, sir.

Q. There is no car puller at the starch building?

A. No, sir.

Q. Well, then, with regard to these locations that you are now speaking of, there is nothing unusual and peculiar about the service you do as compared with the service you do at other industries?

A. Nothing unusual.

Q. Well, now, in your operation of this plant as yard master, I want to ask you these two things. In the first place, is there anything about your conditions in there and your operations in there and what you have to do, that you see is in the power
524 of the Staley Company to cooperate or help you in any way to improve and which they have failed to do? Is it just as fine as it could be from anything that they have done about the whole matter, or is there some room for criticism or improvement or change?

A. No criticism on our part.

Q. Well. do you see some room for improvement on how the work can be and is done in the plant?

A. From the railroad standpoint or—

Q. Yes, any standpoint?

A. We can't improve on our service. It is too good now.

Q. Yes; but could you do the work more economically or more efficiently and at less cost to yourselves if Staley would do something or other to make that possible?

A. I don't know what—I don't understand what you mean. I don't know what he could do.

Q. Well, then go at it this way: Does Staley have any locomotive in there that get in the way of your locomotives?

A. No, sir.

Q. Do they have any manufacturing processes of moving raw materials around by trucks and otherwise that get in the way of your crews and interfere with what they do?

A. No.

Q. Do they make any demands for service which are in excess of normal railroad operations?

525 A. No, sir.

Q. Do they have you hold cars waiting for them to tell you what to do with them?

A. Well, not that I know of.

Q. These no-bill cars that you spoke of, could you give me an example of one, or just how does it arise?

A. I don't know the full operation of the Staley plant or anything about how they do their sales—handle their sales department or anything about it, but I just know that we have these no-bill cars, that we call no-bill cars, that are waiting for instructions to move.

Q. Well, could it be possible—suppose the Staley people say that every day they give the Wabash or they give the line haul roads bills of lading for every car that is loaded that day and ready for your switch engine, that your switch engine picks up—that they give them the bill of lading every day on each car, would it be possible that there was some delay between that bill of lading getting to the railroad and you finding out about it; you, the yard master, finding out about it?

A. Of course, we have an organization that finds out about it; I don't just personally go and find out about all these cars.

Q. But your men do?

A. I oversee the performance.

Q. What I am getting at, could the no-bill be the result, or what you call a no-bill condition, be the result of some
526 delay in transmitting to your yard conductor or your yard men the facts of the bill of lading which had been issued?

A. If the bill of lading was issued, we have no no-bill.

Q. That is true, but you might think you had.

A. No, we have no no-bill if you have got a bill of lading. It is ready to go.

Q. Suppose this is a shipment that is going out of Decatur over the Illinois Central Railroad, might it be that the Illinois Central agent had issued a bill of lading and knew where the shipment was going and the track it was coming from, and yet that information had not gotten to your yard man at the time he actually took the car out?

A. That would be a no-bill to us, until he told us.

Q. It would be a no-bill to you?

A. Yes, sir.

Q. And yet it might not be a no-bill to Staley?

A. That is right.

Q. Would you say that has not happened?

A. I don't know whether he loses any bills or not.

Mr. Burchmore. Mr. Le Forgee wants to inquire about several things and I think perhaps after lunch——

Com. Patterson. After lunch.

By Com. PATTERSON:

Q. You are testifying, of course, on the theory that the customer is always right, aren't you?

A. No; we are right.

527 Mr. BURCHMORE. Mr. Commissioner, before you recess I would like to make two requests if I may. We have several witnesses from out of town who are here as something of an accommodation to us, and I would like if I could, with the consent of counsel, to get them on this afternoon.

Com. PATTERSON. If there is no objection, we will put them on right after lunch.

Mr. BURCHMORE. Yes, sir; or perhaps finish with this gentlemen, either one.

Com. PATTERSON. Well, there is no particular hurry. If you care to put them on right after lunch——

Mr. LE FORGEE. I am in no hurry.

Mr. BURCHMORE. The other thing, Mr. Commissioner, our plant is here in Decatur. Now, I have always felt that cases are to be decided by the Commission on the record, and the Commission says so, and I do not wish to be in the position of requesting that the Commissioner or Examiner shall visit at our plant and inspect the tracks. I do not wish to make that request, but I wish to say this, that should the Commissioner consider it desirable or helpful to his understanding the testimony, or simply as a matter of curiosity, to visit the plant, the Staley Company would be very glad to have the facility available for the Commissioner and the Examiner to visit the plant.

Com. PATTERSON. I am going to try and do that before——

528 Mr. BURCHMORE. If the counsel on either side want to go, they may.

Com. PATTERSON. I expect to go down there at lunch time today, but I don't want any lawyers with me. I am perfectly competent to inspect those tracks.

Mr. LE FORGEE. No lawyers or witnesses, as a rule.

Com. PATTERSON. That is right.

Mr. LE FORGEE. Would you be willing to accept facilities for transportation?

Com. PATTERSON. No; one of the Commission's employees have an automobile here.

Mr. LE FORGEE. I would prefer, Mr. Commissioner, that none of these investigators who have been here accompany you on that trip. I don't like to be fractious about those things but——

Com. PATTERSON. That is perfectly all right with me, if you have an automobile.

Mr. LE FORGEE. We will make arrangements to have one here, with a driver. We will be quite impartial and furnish you with a guide.

Com. PATTERSON. O. K., that is perfectly all right. We will recess until two o'clock.

(At 12:45 o'clock P. M., Wednesday, April 24, 1940, recess taken to 2:00 o'clock P. M.)

529 AFTERNOON SESSION

The hearing was resumed pursuant to recess, 2:00 o'clock P. M.

Com. PATTERSON. Come to order, please.

Mr. BURCHMORE. Do you want to have his cross-examination before I call these other witnesses?

Com. PATTERSON. Oh, that is right, I think you better call your witnesses. They want to get away.

Mr. BURCHMORE. They are here as an accommodation to us.

Com. PATTERSON. Yes.

JOHN W. BINGHAM, was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. What is your full name and the city of your residence, Mr. Bingham?

A. John W. Bingham, Chicago, Illinois.

Q. What is your present occupation?

A. Traffic manager of the Corn Products Refining Company.

Q. How long have you been connected with that company in this capacity?

A. Well, twenty-two years ago last December; it is about twenty-two and a half years.

Q. Now, you are here testifying in this matter as a witness at the special invitation and request of Mr. Burwell, of the Staley Manufacturing Company? He asked you to come?

A. Yes; he asked me to come down here.

530 Q. Now, your company is not a party to this case, I. & S. 4736, involving this suspension?

A. No; we are not.

Q. Were you a witness individually in the proceedings in 1932 before the Interstate Commerce Commission in Ex parte 104, Part II?

A. Yes, I was.

Q. And when you testified at that time did you do so as a volunteer or were you called upon by the Commission's representative to please appear and testify?

A. We were called upon, at the Corn Products Refining Company.

Q. You did testify in response to the questions that were put to you by the Commission?

A. Yes.

Q. With respect to certain of your plans?

A. That is right.

Q. How many years experience have you had in railroad traffic and transportation matters?

A. Well, I am kind of ashamed to say, but I have had about forty years of it.

Q. And what was your work prior to your connection with the Corn Products Refining Company?

A. I was with the New York Central line; I was general freight agent of the Indiana Harbor Belt Railway.

Q. And in that position did you have to do with the mak-
531 ing and the determining and the enforcing of the freight rates of this road?

A. Well, to some extent but not so much. I didn't come up in the rate end of it, so I have never really posed as an expert on rates. I have had a lot to do with them, though.

Q. Were you familiar with railroad methods and railroad traffic and transportation conditions as a traffic man would be?

A. Yes, sir.

Q. Now, I direct your attention to a certain proceeding before the Illinois Commission, which has been referred to in this hearing, wherein a session was held at Springfield, Illinois, on March 22, 1938, before Transportation Rate Expert, F. B. McElroy, involving the then pending question of establishing a $2.27 charge on state business in the Staley plant at Decatur. Do you recall that proceeding?

A. Yes, sir.

Q. And did you at that time testify in that proceeding at the instance and request of the A. E. Staley Company?

A. Yes; I did.

Q. Does the Corn Products Refining Company have any plants in the State of Illinois?

A. Yes.

Q. Where are they located?

A. One plant at Argo, Illinois; another one at Pekin.

Q. And has it any other plants in the central west?
532 A. Yes; it has one at Kansas City—North Kansas City.

Q. And then you said an eastern plant or plants?

A. Yes; one at Edgewater, which does not have the same kind of operation, and, as a matter of fact, we are abandoning that or will at some future date.

Q. Does your company engage in the grinding or processing of corn and the receipt of corn and the shipment of its products in the sale of its products?

A. Yes, sir.

Q. In that line of business do you understand your company to be a competitor reaching common markets in competition with the Staley Manufacturing Company?

A. Yes; we are.

Q. Now, is your company one of the largest producers of corn products in the country, perhaps 40, 50, 60 percent of the total production?

A. Well, without boasting, we are the largest.

Q. Taking your plant at Argo, do you have any considerable extent of trackage in that plant, in and about that plant?

A. Yes, sir.

Q. As much as a mile of track?

A. Yes; we have more than that.

Q. As a matter of fact, do you have—about what is the total trackage that you have in there.

A. Well, I think it is approximately between 18 and 21
533 miles in there.

Q. Now, is that track or any part of that track necessary by reason of plant processes of moving freight in and about the plant or is it in connection with your interstate and state transportation?

A. It is all in there because it is a necessary operation to get our cars in and get our products out.

Q. Approximately, can you state the number of general locations in that plant where freight is placed for loading and where it is placed for unloading. I don't mean the number of single car locations but the different departments or groups of tracks, what we call loading and unloading locations?

A. Why, I think that question was very well asked me in the Illinois case and I wasn't sure then and I haven't checked up since, but I would say it is over twenty places that we would place cars, twenty, twenty-five, something like that.

Q. Well, are there certain tracks or parts of your plant where you unload corn, we will say?

A. Yes.

Q. You unload it in some places and not elsewhere?

A. That is right, we unload at the elevator.

Q. And do you have places where you unload coal?

A. That is right.

Q. Places where you unload boxes and barrels and things of that kind?

534 A. Yes, sir.

Q. Do you have places where you load starch?

A. Yes.

Q. What are your principal out-bound products?

A. Well, our principal products are what we call corn syrup, unmixed. You would call it glucose.

Q. No; I would not.

A. Wouldn't you? Well, good for you. Some of them would. Corn syrup, unmixed, starch, sugar, oil, corn oil, gluten feed.

Q. Meal?

A. Meal, gluten meal.

Q. And are these different products loaded at various and different loading places in the plant?

A. Oh, yes.

Q. Are these products of yours, broadly speaking—don't, please, draw any fine distinctions of quality—but are they, broadly speaking, competitive with products of the Staley Company?

A. Yes, sir.

Q. Selling in the same territories and markets to the same classes of trade?

A. Yes, sir.

Q. What railroads do you ship over to reach the various markets to which your goods move from Argo?

A. From Argo?

535 Q. Yes.

A. Well, practically every trunk haul—trunk line out of the city.

Q. How many in number?

A. Well, how many railroads run in there? Twenty-six or something like that. We try to divide them all up, help them all out.

Q. Do you receive freight over all of these railroads, broadly speaking?

A. Well, we would, but we don't receive much in-bound stuff. Our in-bound material is all corn and coal.

Q. Well, does it come in by railroad?

A. Yes.

Q. And by various railroads?

A. Yes.

Q. Now, how many of these—or what railroads reach your plant at Argo with their rails?

A. Well, we have the Indiana Harbor Belt, the Belt Railway, B. & O. C. T. and The Alton or Baltimore & Ohio—it was the old Alton—had direct access to the plant.

Q. But by the use of one or the other of these belt lines or these four roads, you make your shipments out of Chicago and

receive shipments into Chicago in connection with all of the various trunk roads?

A. That is right.

536 Q. Line haul carriers?

A. Yes.

Q. Now, what terminal services do you receive at your plant in the way of placement of cars with reference to the loading and the unloading points where you desire to and do load them and unload them?

A. Well, we have—our cars are—corn, coal, such empties as we require, and other miscellaneous freight is brought in and delivered and spotted at the different places where it is necessary to spot them.

Q. They are placed at the point where cars are desired by you to be loaded?

A. That is right.

Q. Or unloaded.

A. That is right.

Q. And is there any restriction on that, the places that you want to place them?

A. No.

Q. Refusing to place them?

A. No.

Q. Now, where that is done by the—where a car comes into Chicago, let us say, over the Wabash or Illinois Central or Pennsylvania, neither of those roads reaches your plant?

A. That is right.

Q. How do they get the car to you?

537 A. Well, whichever way I route, either the I. H. Belt or the Belt Railway.

Q. And who places the car in the plant then?

A. The Belt Railway.

Q. Does the Belt Railway place them for all——

A. That is right.

Q. For all roads?

A. Yes.

Q. Does your plant have any plant locomotives?

A. No.

Q. All of the switching and movement of cars in and about your plant by engines is done by the Belt Railway engines?

A. That is right.

Q. Well, you have car pullers at certain locations?

A. Yes.

Q. What do you do with them?

A. I don't know how we operate them, but we use them.

Q. You use them, utilize them, in order——
A. Oh; yes, sir.
Q. To place the car exactly where it is wanted?
A. Yes.
Q. And some of your loading locations are equipped with car pullers and some are not?
A. That is right.

Q. Now, I asked you whether you had business to various states. Do you have export traffic?
538 A. Yes.

Q. Moving by railroad?
A. Yes.
Q. Do the railroads make any charge on any of your carload traffic for placing the cars at loading or unloading tracks, or taking them from the loading or unloading tracks, other than the compensation they may receive in the through-freight rate?
A. They do not make any charge to us.
Q. Is there a general system of reciprocal switching charges and absorptions at Chicago?
A. Oh, yes.
Q. Does the rate from Chicago to Baltimore, we will say, on any product that I might name, apply from every part of the City of Chicago, all side tracks and all team tracks and all originating points, broadly speaking?
A. Well, broadly speaking; yes. I don't think it applies from all team tracks. It certainly does not apply to all team tracks but it does to all industries except—I don't know but what may be way up on the north side, and there is some kind of an arrangement at Evanston where there is a little plus.
Q. There are recognized some exceptions such as coal to team tracks on the Milwaukee Road and exceptions of that kind?

A. Yes.
539 Q. But as a broad rule there is a system of absorption so the same rate applies to and from all parts of Chicago?

A. That is right; except, Mr. Burchmore, and I think you ought to get this clear, it does not apply—these trunk line railroads will not accept, as a reciprocal arrangement, carloads for their downtown team tracks.
Q. Yes.
A. They except that in the tariff.
Q. And that would include the produce terminal, for instance, or it might include the produce terminal?
A. Darned if I know. Yes; I guess it would.

Q. We are not interested in those details, but, as a general proposition, the same rate applies and it is that rate that covers your shipments in and out of your plant?

A. That is right.

Q. And besides that rate you pay nothing to your railroads?

A. No.

Q. Unless it be demurrage or some special switching charge.

A. There is plenty of intraplant switching.

Q. Now, do you have intraplant switching?

A. Yes, sir.

Q. Of what does that consist in a general way?

A. Well, that consists of where we, of our own accord and for our own convenience, order the railroad, the Belt Railway, who is operating in our plant, to move a car from here to there,
540 or from there to here.

Q. And you do have such movements of material from one part of your plant to another, Mr. Bingham?

A. Oh, yes.

Q. In railroad cars?

A. Yes, sir.

Q. Well, now, is there a course of manufacturing process in your plant that requires materials to move in the process of manufacture, in part of the plant's processes, from one part of the plant to another in a regular flow of plant movement, such as we have in steel plants, at least proverbial?

A. No; not because of the processes of the plant.

Q. Now, has there at any time been any change made at your Argo plant in addition to the freight rates for the placement or the spotting of the cars, terminal services such as we are here describing?

A. No, sir.

Q. Now, you have a plant at Pekin?

A. Yes.

Q. Is that another large plant?

A. That is a large plant. That isn't as large as the Argo plant.

Q. Just state the facts, very briefly, about that work?

A. Well, I think the difference between them is volume and not operation. Argo grinds about 80,000 bushels of corn a day and Pekin about 55,000 bushels. The plant operation is very
541 much similar to Argo except that we do not ship any package goods out of Pekin. That is a bulk plant, what we call a bulk plant.

Q. And do you have a considerable extent of trackage there?

A. Yes.

Q. In round figures how much trackage?
A. Oh, I was afraid of that, but I don't know, John.
Q. Several miles?
A. Oh, yes; surely.
Q. And what railroads reach that plant with their rails?
A. The P. T. Company, what we call the Peoria Terminal Company, and the Peoria & Pekin Union.
Q. Do you have any plant locomotives?
A. No.
Q. Who performs the service of placing cars in that plant?
A. The P. T. Company.
Q. And does it place the cars regardless of what railroad has the line haul in and out of Pekin?
A. Oh, yes; we would insist on that.
Q. And is there an absorption of switching charges, and so forth?
A. At Pekin?
Q. Yes.
A. Yes; we don't pay any of it.
Q. Now, I don't want to go into detail, but is there the same result at Pekin that you have at Argo, namely, the city
542 freight applies and you pay nothing for any placement of spotting but get the placement and spotting service by the railroad? Is that too fast?
A. Well, it is a little broad, Mr. Burchmore, but generally speaking it is the same. There are exceptions where the road haul carriers will not absorb some of our switching in and out of Pekin.
Q. Well, is there any charge added to the freight rates representing the service of placing the cars at the loading and unloading points in your plant at Pekin?
A. No, sir.
Q. And has there every been one or a proposal of one?
A. No.
Q. Now, what is the situation at Kansas City?
A. Well, about the same except that the plant there has a grind of about 20,000 bushels and in that plant the Wabash and the Burlington and the Missouri Pacific have entry to the plant and they—one road handles it alternately or successively each six months. That is different than our other two plants.
Q. The three roads take turns?
A. That is right.
Q. Of performing all terminal services in the plant?
A. That is right, in the plant.

Q. Is that an arrangement between themselves?

A. Yes; and jointly with us.

543 Q. Well now, at these—and do you get the North Kansas City or Kansas City rate without any extra charge for placing cars?

A. Yes.

Q. And are they placed at the loading and unloading points?

A. Yes, sir.

Q. Now, the products of these plants at Pekin and North Kansas City, like the products at Argo, are competitive with Staley and go to the same markets, and so forth?

A. That is right.

Q. In the same way?

A. Yes, sir.

Q. Well now, Mr. Bingham, if the railroads or anyone else proposed to establish a charge for placing cars at the unloading points or taking them from the loading points in these three plants of yours, would such a charge be a new and unprecedented and novel charge in your experience?

A. Absolutely.

Q. Do you know of any precedent for such a charge excepting this charge here at Staley?

A. No; I don't personally know of any.

Q. And would you likely know if there had been one?

A. I think it would come to my attention. I am around a good deal and have a wide acquaintance.

Q. Well, now, if the carriers or the Commission or anyone else were to propose an imposition of a charge at either one of

544 these three plants, or were to propose that the service that the carriers rendered these plants should be cut off at the gates of the plants, would there be a vast amount of data and information and testimony that you would want to prepare to meet such a question?

A. Oh, my; yes.

Q. And have you that data and information, and so forth, at hand at this time?

A. No.

Q. You have not made any preparation to meet a charge?

A. No. I am not looking for trouble.

Q. Is there any further statement you would like to make, Mr. Bingham?

A. No; I don't think so.

Mr. BURCHMORE. That is all of the direct examination.

Com. PATTERSON. Cross-examine.

Cross-examination by Mr. SMITH:

Q. Mr. Bingham, how long has your plant been located at Argo?

A. About—it has been operating about twenty-six years.

Q. Do you know how long the plant has been operating in Pekin?

A. Longer than that, but no, I don't know how long; a good many years, Mr. Smith.

Q. All during that time the railroads have served the plant as you have described?

545 A. Yes, sir; as far as I know.

By Mr. STRASSER:

Q. Mr. Bingham, I believe you stated that the Belt Railway does the work in your plant and switches out car and switches them in?

A. That is at Argo?

Q. Yes.

A. Yes, sir.

Q. And it has a published tariff for that service, a published switching rate for that service?

A. You mean from a trunk line road over to our plant?

Q. Yes.

A. Oh, yes. Well, no, I don't—I think that is reciprocal, I don't think that is published. That is an understanding among the railroads; I don't know what they get——

Q. You understand that the reciprocal rates are published?

A. I beg your pardon, maybe I talk too fast.

Q. Finish that you were saying there a while ago. I just want to get the facts about that charge.

Mr. BURCHMORE. Mr. Strasser, may I remind you that the Chicago arrangement is under the Lowery tariff, which is not a form of published switching but it is a joint tariff in form. Do you remember that? It is a different tariff arrangement. That is what Mr. Bingham is trying to tell you.

The WITNESS. I don't know what they are, Mr. Strasser.

546 By Mr. STRASSER:

Q. What I am getting at is that the railroad carrier in some way pays the Belt Railway Company for the performance of that service?

A. I would certainly assume so.

Com. PATTERSON. Isn't it a joint tariff where they divide?

Mr. BURCHMORE. They are all parties to the Lowery Agent Sperry's tariff.

By Mr. STRASSER:

Q. Whatever way it is done, there is no additional charge to your company?

A. That is right.

Q. But somebody has to pay for it?

A. Sure.

Q. And the general understanding is that the road haul carrier pays?

A. Yes.

Mr. STRASSER. That is all.

Com. PATTERSON. Any more questions?

By Mr. LOVERING:

Q. Will you tell me if there is any one of those plants that you have mentioned where more than one railroad operates inside the plant?

A. Well, I—more than one railroad?

Q. More than one railroad?

A. I thought I did say that.

Com. PATTERSON. He said they didn't at the same time.

The WITNESS. No, no.

547 By Mr. LOVERING:

Q. More than one inside the plant at the same time?

A. No.

Mr. GOEBEL. He said there is not more than one operates at the same time.

Mr. LOVERING. I did not hear that.

The WITNESS. Yes.

By Mr. LOVERING:

Q. How do you notify that railroad operating inside the plant as to where you want cars placed?

A. You mean at any one of the plants?

Q. Well, take the Argo first.

A. The Argo plant? Well, of course, we notify our yardmaster, who keep in very close touch with the shipping department. Understand, my office isn't out there so I might not be able to give you all the details of that, but as a general—[coughing] I have got a bad laryngitis.

Q. Don't talk quite so loud. When cars arrive at your company from Argo, how do they get into your plant? What is your procedure for getting them in and getting them placed at loading points?

A. Whatever road who may be handling them who can reach our plant, either the Belt Railway or the Indiana Harbor or B. & O. C. T. will bring them in and have a place to put them, and then the

engine, plant engine, will go get them and put them where they belong.

548 Now, when I say "where they belong," that is just a general understanding; you don't have to write them about it. We have a yardmaster there, a very competent man—I have been told that he is one of the best in the district—and the crews of the engine are very familiar with our work. You don't have to tell them a lot of things; they know what to do.

Q. But the railroads bring the cars in the plant, just bring them in and then go out and leave them, and then the inside railroad does the switching?

A. That is right.

Q. Does your yardmaster inside the plant issue a switch list to the crews to tell them what work is to be done?

A. Well, I don't know. He is on all the engines himself. He probably tells them what is to be done.

Com. PATTERSON. We can find all that out if we get interested in it.

The WITNESS. As I say, my office is not out there. I don't pose as an expert on plant operations.

By Mr. LOVERING:

Q. Tell me, has the Commission ever made any investigation there.

A. I don't know, not that I ever know of—or not that I know.

By Mr. BURCHMORE:

Q. You mean by inspectors on the ground?

A. Yes.

By Mr. LOVERING:

Q. Have they ever investigated as part of Ex Parte 104?

549 Mr. LOVERING. I believe he did say in 1932 they did.

Mr. BURCHMORE. He testified in that case?

The WITNESS. That is right; I did.

By Mr. LOVERING:

Q. Did they ever issue a report?

A. No.

Mr. LOVERING. I don't believe I have anything else, Mr. Commissioner.

Com. PATTERSON. Is that all?

Redirect examination by Mr. BURCHMORE:

Q. Well, in that case you did not understand that the Commission was contemplating the creation or imposition of a spotting charge against your company?

A. No; I had no idea.

Q. If you had thought that, would you have consulted lawyers and economists and others that——

A. I probably would have, yes.

Mr. BURCHMORE. That is all.

By Com. PATTERSON:

Q. Are you familiar with the operation of the plant here in Decatur of the Staley Company? I mean, so far as railroad operation is concerned?

A. No; I am not. I couldn't pose as—I have been down there and I have seen it and it always looks like a nice clean operation to me, but I don't know enough about it——

Q. To testify?

A. To know how you would feel about it; yes.

550 Com. PATTERSON. That is all.

Mr. LE FORGEE. There is one question I would like to ask, Mr. Commissioner.

By Mr. LE FORGEE:

Q. I wish you would state whether or not the corn grinding industry is composed of a great number of industries or whether they are comparatively few?

A. Well, they are comparatively few.

Q. Could you call them about seven or eight?

A. Yes; I think so.

Q. What are they?

A. Well, there is the A. E. Staley Manufacturing Company, there is the American Maize Products Company. I am going by states now. And then there is the——

Q. Penick & Ford?

A. Well, I will go that way; the Penick & Ford at Cedar Rapids; the Clinton Company at Clinton, Iowa; the Hubinger Brothers at Keokuk, and the Union at Granite City.

Q. And Anheuser-Busch?

A. Anheuser-Busch; yes, sure.

Q. As a matter of fact, the concerns that you named process approximately 95 percent or more of the corn products of the United States, don't they?

A. Yes; that is—well, I would say so, of our kind of manufacturing.

Q. I have reference to really competitors of yours in the processing of corn?

551 A. That is right; yes.

Q. And the arrangement is something like the following, the largest being the Corn Products Company?

A. Yes; I didn't name my own there, did I, in that?

Q. I didn't want you to forget it. It is so small I thought you might have overlooked it. Is it the Corn Products Company, The Staley Manufacturing Company, the American Maize, Penick & Ford, and the others ranging down the list?

A. That is right.

Mr. LOVERING. That is all.

(Witness excused.)

Mr. BURCHMORE. Mr. Miller.

CHARLES E. MILLER, was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. Your full name and the city where you reside?

A. Charles E. Miller, Chicago, Illinois.

Q. What is your occupation, Mr. Miller?

A. Traffic manager of the American Maize Products Company.

Q. And their plant is where?

A. Roby, Indiana, which is in the Chicago switching district.

Q. Are you here at the special invitation and request of Mr. Burwell of the Staley Company?

A. Volumtarily; yes.

552 Q. Your company is not a party to this I. & S. 4736 or here in its own behalf as regards anything we are requiring into?

A. No; we are not in this I. & S. case.

Q. Did you hear part of the testimony yesterday and today?

A. Yes, part of it.

Q. And you have heard Mr. Bingham's testimony?

A. I have heard Mr. Bingham's testimony.

Q. What is the business of the American Maize Products Company?

A. We manufacture products from corn; the same line as the Corn Products Refining Company.

Q. And you are in competition with the other companies including Staley?

A. Yes.

Q. Have the same markets and the same sources of corn and all that?

A. True.

Q. And the price that is paid for corn and the price you get for your products and the transportation charges and all that sort of thing enter into the profits that you make and the competition you encounter and all that?

A. Yes.

Q. Would $2.50 a car difference in freight rates be of any consequence to you against what you now pay?

A. I don't think I could answer that question. I presume it would.

553 Q. Now, how long have you been with the American Maize Products Company in this capacity?

A. Since 1917; that is twenty-three years.

Q. Is your plant equipped with track facilities?

A. Yes.

Q. And how much track have you, would you say?

A. Oh, I would say about three miles of track in the plant.

Q. And about how many general loading and unloading locations or areas in the plant?

A. Several.

Q. Would it be perhaps a dozen?

A. I should think so.

Com. PATTERSON. Where is this plant, did he state?

The WITNESS. Roby, Indiana.

By Mr. BURCHMORE:

Q. In the Chicago switching district?

A. In the Chicago switching district.

Q. What railroads reach the plant with their rails?

A. The Pennsylvania Railroad and the Indiana Harber Belt Railroad.

Q. Do these railroads both enter the plant with their engines and place the cars?

A. No; the Pennsylvania do the switching in the plant and place the cars for loading or unloading as the case may be.

Q. Do they do that even on shipments where the Indiana Harber Belt has been a participant in the transportation?

554 A. Yes. I imagine the charges that are placed on the cars are prorated between the carriers on a monthly basis.

Q. Does the Indiana Harbor Belt bring the cars up to the plant and then the Pennsylvania places them?

A. Yes; they bring them up to the plant and the Pennsylvania performs the interior service.

Q. Does corn, for instance, come into the Chicago area over the various railroads from points throughout Illinois and Indiana and adjacent states, consigned to your company?

A. No; not consigned to our company.

Q. Well, it reaches your plant?

A. It reaches our plant; yes.

Q. Well, corn comes from those states to Chicago, that you grind?

A. That is true; yes.

Q. And does it come into Chicago over the various railroads and then, after it has come in, is it delivered to your plant either

by the Indiana Harbor or the Pennsylvania in their Chicago switching movement?

A. Yes; it comes into our plant for unloading at the elevator.

Q. And is the system of rates such that you pay the Chicago rate on this traffic?

A. Yes.

Q. And is that true out-bound as well?

A. Out-bound also; yes.

Q. Now, are the cars placed at the points where you
555 unload them as to the in-bound traffic, and are they taken from the points where you load them by the railroads?

A. Yes; they are placed at a spot for unloading or loading as the case may be.

Q. And about how many cars would you say you receive and ship in an ordinary day at that plant?

A. Between 40 and 50 cars, I should think.

Q. And for this complete terminal service, that is, the placement at the point of loading and unloading, is there any charge imposed by the railroads other than the compensation they receive in the through freight rates?

A. We do not pay any further charge for such service.

Q. Do you have any locomotives of your own?

A. No.

Q. Do the railroads do this work—does the Pennsylvania Railroad do this spotting work at its own convenience and without any interference from you or otherwise?

A. Well, without any interference from us. I presume the conductor gets the placing list or the list of where they want the empties.

Q. Has the service always been performed at your plant in this way and without charge?

A. Yes.

Q. Well, now, you know of this $2.50 charge at Decatur that is provided in the Sperry tariff which is under discussion
556 in this hearing?

A. I know of it.

Q. Do you know of any like charge ever made or imposed or demanded in any other industry anywhere else?

A. Not in our industry, that I know of.

Q. Do you think you would know if there had been one?

A. I believe so.

Q. Now, if anyone were to propose imposing or establishing such a charge at your plant, would there be many matters that you would wish to prepare and statistics and rates and data, and

so forth, that you would wish to construct in opposition to any such proposal?

A. I should think there would be plenty of that data to prepare.

Q. And you understood that there is not such a proposal here and have not made such preparations?

A. No; none that I know of.

Q. According to your information, is there any other industry in the City of Chicago engaged in other lines of business, where the carriers impose a charge similar to this $2.50 charge here at Staley?

A. I don't think I am qualified to answer that. I don't believe so, though.

Q. You don't know of any such case?

A. I do not know of any such a case.

Q. Did you appear at the request of the Staley Company
557 in the hearing before Examiner McElroy, of the Illinois Commerce Commission, at Springfield, March 22, 1938?

A. Yes, I did.

Q. And you there testified in support of the Staley Company's protest against that charge?

A. Yes.

Q. On their behalf. Is that the only plant that your company operates?

A. That is the only plant we operate.

Q. And Roby is within the Chicago switching district?

A. Yes.

Q. Are rates to and from Roby subject to the so-called Sperry terminal tariffs?

A. Yes; there is an absorption tariff. I think it is Sperry's 20 or 21.

Q. Is there anything you would like to say, Mr. Miller?

A. I don't believe so.

Mr. BURCHMORE. That is all the direct.

Cross-examination by Mr. SMITH:

Q. How long has your plant been located at Roby?

A. It was built and operated as the Western Glucose Company in 1906 and later changed over to the American Maize.

Q. Has the Pennsylvania been switching your plant ever since that time?

558 A. Yes; both lines.

By Com. PATTERSON:

Q. Mr. Miller, are you familiar with what is involved in the switching and receiving and delivering of cars in the Staley plant?

A. Only in a general way.

Q. You could not testify as to the details of that service?
A. No; I could not.
Com. PATTERSON. That is all.
(Witness excused.)
Mr. BURCHMORE. Mr. Shackell.

CHARLES S. SHACKELL was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. You are Charles S. Shackell, of Cedar Rapids, Iowa?
A. Correct.
Q. With what company are you connected and in what capacity?
A. Penick & Ford, Limited; general traffic manager.
Q. And their plant at Cedar Rapids, Iowa is in what trade?
A. It is a corn processing plant.
Q. You make a general line of corn products there?
A. We do.
Q. And is that plant equipped with various departments that perform the various processes, and have elevators and starch plants and all that sort of thing?
559 A. It is.
Q. Is it equipped with standard gauge tracks?
A. It is.
Q. About how much standard gauge track have you in the plant?
A. Slightly less than two miles.
Q. Do you have any plant locomotives?
A. No.
Q. What railroads physically reach the plant?
A. The Chicago, Milwaukee, St. Paul & Pacific on one side of our property; the Chicago, Rock Island & Pacific on the other side of our property, with no physical connection between the two.
Q. Do you make shipments out of Cedar Rapids and do you receive shipments coming to Cedar Rapids via other railroads than the Milwaukee or the Rock Island?
A. We do.
Q. That is, like the Illinois Central, for instance?
A. We do.
Q. Well now, when you make a shipment via the Illinois Central, how is the shipment moved from the loading track until it leaves town?
A. Well, I speak of the Milwaukee on either side, of course.
Q. All right.
A. A car is moved from our plant on the Milwaukee to the Milwaukee interchange with the Illinois Central, and there they
560 pick it up and handle it.

Q. The Milwaukee engine takes the car from the place where you loaded it?

A. That is right.

Q. Out, and gives it to the Illinois Central in their interchange yard?

A. That is correct.

Q. Now, does the Illinois Central issue the bill of lading on that car?

A. The Illinois Central issues the bill of lading.

Q. And how does the Milwaukee Road know they should take the car and all that?

A. We card the car for the Illinois Central and our yardmaster—we are only speaking of one car now, but let's talk—our yardmaster will make a switch order. You might have cars for three other railroads in that same batch.

Q. And he gives a switch list or switch order to the Milwaukee conductor?

A. To the Milwaukee switch foreman.

Q. Switch foreman?

A. That is right.

Q. And that shows where all the cars are to be handled for all of the railroads?

A. Shows to what railroad.

Q. Does it show their destinations?

561 A. No.

Q. Now, how far is it via these Milwaukee rails from your loading point over to the place where the Illinois Central takes custody of the cars?

A. About a mile and a quarter; just about a mile and a quarter.

Q. Well, now, what is the situation when the Rock Island does the switching?

A. Substantially the same except the distance is possibly a little greater because that part of the property served by the Rock Island is on what is known as the Rock Island Belt, and it is a little longer haul.

Q. And in the case of shipments that move out over the Illinois Central, the Illinois Central pays the Milwaukee or the Rock Island, as the case may be, for the switching work?

A. That is my understanding.

Q. No charge is imposed against the Penick & Ford?

A. No.

Q. Now, do you pay anything other than the rate for the service of placing the cars?

A. You are speaking of road haul cars?

Q. Cars that have road haul transportation.

A. No; we do not.

Q. Do you know of this $2.50 charge at the Staley plant?

A. Yes, sir.

Q. Is there or has there ever been any such charge de-
562 manded or imposed at Cedar Rapids?

A. Not to my knowledge.

Q. Would you know if there had been?

A. I think so; yes.

Q. And do you know of anywhere else that such a charge has been made?

A. I do not.

Q. Now, you testified at Springfield at the hearing before Mr. McElroy, to which I have already alluded?

A. I did.

Q. And is your company in competition in this line of business with Staley and with the others that you mentioned?

A. We are.

Q. And you ship export into the various states?

A. We do.

Q. And you get corn in the corn territory?

A. That is correct.

Q. Now, in the switching and movement of cars in and about your plant, is there any plant engine of yours or anything your men do that slows up the work of the Milwaukee or Rock Island train crew?

A. Not at all.

Q. Well, how do they do the work, in your way or their way?

A. Well, they have—I mentioned the fact that they have a yard-master. He is on during the day, and he gives his orders to
563 the switch foremen as they come in to do the switching.

By Com. PATTERSON:

Q. They do what he tells them to do?

A. That is the point. For his night switching he will leave an order, and beyond that, I suppose, if there is anything else that is needed, the plant superintendent would issue an order. But we have, as I said, no power or anything of the kind of our own.

Q. Have you endeavored in every way to cooperate with the two railroads and assist them in making the work of their engines efficient and economical?

A. To the extreme.

Q. Have there been suggestions of theirs from time to time of little things that could be changed and could be improved or anything?

A. I think more of the suggestions came from me.

Com. PATTERSON. Yes; you did most of the suggesting.
The WITNESS. That is right.

By Mr. BURCHMORE:

Q. Is that in the interest of economy and efficiency and mutual——

A. Naturally, Mr. Burchmore, if we can make it easy for the lines to operate, it is to our advantage.

Q. Now, you come from the country where the tall corn grows, I believe, Iowa?

A. That is correct.

Q. I haven't asked the other witness about this. Is there
564 any competitive situation of this sort: If the railroads were compelled for any reason to impose a new terminal charge, like this $2.50 a car, for placement on corn products and corn, would there be any tendency in that to induce traffic to move by trucks in your opinion, or other modes of conveyance?

A. I think that would contribute, no doubt about it.

Q. Is there any activity of these trucks at this time, seeking business?

A. There is, but not in connection with my company.

Q. You try to favor the railroads?

A. The rails always, to the extreme.

Q. Have there been times when you have had to kind of stand up for the railroads and resist the wiles of the trucks, we will say, for business?

A. Well, we naturally realize the importance of the railroads.

Q. Well, in your judgment, would it be a good thing or a bad thing for the railroads to seek such a charge, in their own interests?

A. I think it would be a bad thing.

Q. Is there anything further, Mr. Shackell?

A. None whatever—nothing.

Com. PATTERSON. Cross-examine.

Cross-examination by Mr. SMITH:

Q. Mr. Shackell, how long has your plant been located in Cedar Rapids?

565 A. I have to remind you that the plant before ours there was the Douglas Company. I don't know when that was started. Penick & Ford purchased what was left of the Douglas Company and constructed this plant in 1920, so you might say it is since 1920 that the plant has been located there.

Q. Have the two roads been serving the plant since that time?

A. I beg your pardon?

Q. The two roads have been serving the plant since that time?

A. As far as I know; yes. You mean since our time?
Q. Since 1920?
A. Oh, yes.
Q. Did you state how many places of loading and unloading there are in the plant?
A. How many?
Q. Yes; different places?
A. There are about eight, but they will accommodate from three to four cars; possibly some of those loading platforms might accommodate five; but there are spots, see.
Com. PATTERSON. These two railroads can't get in each other's way there?
A. No; because there is no physical connection, Mr. Commissioner. The Milwaukee is higher and the Rock Island goes under them. There is an overhead there; there is no way of any interference.

By Mr. SMITH:

566 Q. Well, does the St. Paul do the switching in one part of the plant that is not done by the Rock Island?
A. That is correct. The Rock Island cannot get to any part of the plant that the Milwaukee gets to. Neither can the Milwaukee get to any part of the plant that the Rock Island gets to.

By Com. PATTERSON:

Q. But you can get the produce to either part of the plant?
A. Pardon me?
Q. You can get the produce to either part of the plant?
A. Well, we can move our produce, naturally, to nearly every location, but not all of them, Mr. Commissioner, only a part of them, possibly.
Q. Are you familiar with what switching there would be involved in connection with receiving and delivering cars to the Staley Company plant here?
A. I am not at all familiar with the Staley plant.
Com. PATTERSON. That is all.
(Witness excused.)

R. A. SHOWALTER was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. Is this Mr. R. A. Showalter?
A. Yes, sir.
Q. Of Keokuk, Iowa?
A. Yes, sir.
567 Q. Are you here, Mr. Showalter, at the invitation and request of Mr. Burwell, of the Staley Company?

A. Yes, sir.

Q. He wrote you asking you to come?

A. Yes, sir.

Q. And did you testify at his request on behalf of the Staley Company at the hearing before Mr. McElroy, of the Illinois Commission, in March, 1938?

A. Yes, sir.

Q. And then and now you were employed with what company?

A. The Hubinger Company, located at Keokuk, Iowa.

Q. And they are in what line of business?

A. The manufacturing of products from corn.

Q. And you have been with that company since what year?

A. Since February 1, 1924, as traffic manager. Prior to that time, from September 1, 1918, to February 1st as assistant traffic manager.

Q. In the manufacture and sale of corn products and the purchasing of corn, do you compete with the Staley Company and these others that have been named here this afternoon?

A. Yes, sir.

Q. In the various markets?

A. Yes, sir.

Mr. BURCHMORE. I suppose, Mr. Commissioner, I should be rather brief about this.

568 By Mr. BURCHMORE:

Q. You have heard these other witnesses?

A. Yes, sir.

Q. I suppose you receive coal and corn and other products and you ship out starch and corn sugar, and so forth?

A. Yes, sir.

Q. Is your plant equipped with tracks and likewise various manufacturing facilities?

A. Yes, sir.

Q. Do you have any narrow gauge tracks in your plant?

A. No, sir.

Q. Do you have any locomotives in your plant of your own?

A. No, sir.

Q. Now, what railroads have physical track connections with your plant?

A. The C. B. & Q. Railroad, the Chicago, Rock Island & Pacific Railroad, and the Wabash Railroad.

Q. And do you have various locations in and about your plant where cars are loaded and unloaded?

A. We do.

Q. Is corn unloaded in one or two particular parts and coal at another and starch loaded at another, and so forth?

A. Yes, sir.

Q. About how many such locations would you count?

A. Approximately twenty.

Q. Now, are the cars placed by the railroads, or either of
569 them, at the particular locations in the plant where you desire them to be placed for unloading or for loading, as the case may be.

A. Yes, sir.

Q. Do all of the railroads do this placement work?

A. Yes, the three that I named. Of course, there is another railroads, the Toledo, Peoria & Western, but they do not have access to our plant.

Q. But the three roads you named do?

A. Yes.

Q. And they do it with their own engines?

A. Yes.

Q. Do they make or impose any charge for the placing of cars at loading and unloading tracks other than the compensation which is contained in the freight rates?

A. No, sir.

Q. Have they ever demanded such a charge?

A. No, sir.

Q. If such a charge were demanded or proposed, would you wish to prepare considerable data and information and testimony bearing on such a charge?

A. I believe we would.

Q. And you have not made any such preparation?

A. No, sir.

Q. You do not understand that there is a proposal of that type involving you?

570 A. No, sir.

Q. Have you had any complaint from anyone, that you are aware of, that your company was receiving too much service from the railroads?

A. Not to my knowledge.

Q. You probably would know if there were such a complaint, would you not?

A. I think we would.

Q. You have heard of this Agent Sperry's tariff the $2,50 charge here at the Staley plant. Have you ever heard of any like charge at any other corn products or other kind of industry?

A. No, I haven't.

Q. Do you believe you would know if there was such a charge in effect?

A. I believe I would hear about it.

Q. Is there anything further you would like to say, Mr. Showalter?

A. No, sir.

Mr. BURCHMORE. That is all on direct.

Com. PATTERSON. Mr. Smith?

Mr. SMITH. Nothing.

By Com. PATTERSON:

Q. How much track do you have in your plant?

A. About 4,500 feet.

Q. Just about as long as a short train?

571 A. Not very much.

Mr. BURCHMORE. It would be a long train.

Com. PATTERSON. No; it would not be a long train as trains go these days.

Mr. BURCHMORE. That is right.

The WITNESS. We happen to be the smallest of the industry.

Mr. BURCHMORE. That is all.

(Witness excused.)

A. J. VERSEN was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. Your name is A. J. Versen?

A. That is right.

Q. Where do you reside, Mr. Versen?

A. Our plant is located at Granite City, Illinois.

Q. And you are the traffic manager?

A. I am the traffic manager; yes, sir.

Q. What is the company?

A. Union Starch & Refining Company.

Q. How long have you been connected with that company?

A. Seventeen years.

Q. In this same work?

A. Yes, sir.

Q. And you had previous experience in railroad traffic work?

572 A. Yes; I was with the Missouri Pacific Railroad in St. Louis for about eight years, and connected with the Merchants Exchange of St. Louis for a period of ten years.

Q. And in that work you had to do with the grain trade?

A. Yes, sir.

Q. Did that work bring you into contact with conditions as regards transportation of grain?

A. Oh, yes.

Q. Mr. Versen, were you a witness before Examiner McElroy, of the Illinois Commerce Commission, at the hearing in March, 1938, which I have been mentioning this afternoon?

A. Yes, sir; that is correct.

Q. And at that time and here you testify as a witness for the Staley Company at their request?

A. That is right; yes.

Q. You received a letter from Mr. Burwell asking you if you would come here and testify?

A. Yes, I did, Mr. Burchmore.

Q. Do you know what this case involves, what it is about?

A Yes; I have a general knowledge of the case.

Q. Well, now, what railroad or railroads have rails that connect with your plant at Granite City?

A. Our plant at Granite City—Granite City, Illinois, to begin with, is located within the switching district of East St. Louis, Illinois. Our plant is served exclusively by the Terminal Railroad Association of St. Louis.

573 Q. And that is a switching and terminal company which the Supreme Court of Illinois has given a certain status with relation to proprietary lines?

A. That is right; yes, sir.

Q. You know something about that matter?

A. Yes, sir.

Q. And how many proprietary, or proprietary or non-proprietary roads are there out of the East St. Louis district that reach your plant through the medium of the Terminal Railroad?

A. There are 14 proprietary lines members of the Terminal Railroad Association, and I think there are about 4 or 5 nonproprietary lines.

Q. Do you ship freight and receive freight via the various 20 or 22 railroads in and out of the St. Louis area?

A. We receive in-bound freight and ship out-bound freight via all railroads running to and from both St. Louis and East St. Louis.

Q. And, regardless of what railroad has the road haul on the traffic, who brings it to or takes it from your plant?

A. The Terminal Railroad Association.

Q. Now, what do they do by way of terminal service in your plant, the placement of cars, and so forth?

A. Why, the in-bound cars are delivered to the Terminal Railroad Association by the different connections in St. Louis and East St. Louis, and these cars are then switched to a classification yard of the terminal, at Madison, Illinois. Madison

574 is located between East St. Louis and Granite City. The

trains are classified there at Madison and then brought up to Granite City.

Q. And the Terminal Railroad places the cars in your plant?

A. Yes, sir; the Terminal do all the switching within our plant.

Q. Do you have any locomotives of your own?

A. No, sir; we do not.

Q. Do you have any narrow gauge tracks?

A. No, sir; all standard gauge tracks.

Q. Do you have a considerable extent of track?

A. We have approximately four miles of track.

Q. And about how many loading and unloading locations are there?

A. Twenty-five.

Q. And the different commodities, I suppose, go to or from different departments or elevators, and so forth?

A. That is correct; yes, sir.

Q. Does the Terminal Railroad place cars wherever you want them placed for loading or for unloading?

A. Yes, sir; they do.

Q. Do they impose any charge for this placement service other than the established through freight rates?

A. No, sir.

Q. Do you know of any other industry where there is a charge analogous to this $2.50 charge that we are discussing here at the Staley plant?

575 A. No, sir; I do not.

Q. Now, if there were such a charge proposed to be put in effect at Granite City, would you want to prepare yourself to combat that charge with data and testimony and exhibits and so forth?

A. Very much so; yes, sir.

Q. Would you regard it as an innovation?

A. Oh, yes.

Q. Do these tracks within your plant reach all of the different parts of the plant where you have freight that you would want to load or where you would want to unload freight?

A. Yes; the tracks within our plant are so situated that we can load and unload on different locations on the various tracks.

Q. And there is no necessity for moving materials in and about the plant from the place where they are processed or packaged or whatever it is, over to some freight car in order to get them loaded?

A. No, sir.

Q. The cars go throughout the plant for the convenience, you might say, of the industry?

A. Yes, sir; the cars are loaded where they are spotted.

Q. Do you receive coal at this plant.

A. Yes; we do.

Q. Where are the mines situated, in what state?

A. We buy Southern Illinois coal.

576 Q. And it moves in state commerce to your plant?

A. Yes; intrastate traffic.

Q. Is that several cars a day?

A. We burn four cars of coal a day; yes, sir.

Q. Did you at one time go out of the use of coal and use gas?

A. Yes; we tried out gas for a while but we gave it up now and went back to coal again.

Q. Are the cars placed at the loading and unloading points in your plant by the very same engine of the Terminal Railroad that brings them up to the plant?

A. Yes, sir; the crew that bring the cars up to our plant every morning, they do the switching at the plant.

Q. Is that the same crew that has brought the cars up to the classification yard at Madison?

A. No; I would say not.

Q. Well, do you determine what railroad crews are going to do the work and how they are going to do it, or do you leave that to the railroads?

A. Well, we have the same crew that has been doing the work for a long period of time, and they are quite familiar with our operations at the plant.

Q. Do you have to give them instructions, or, as Mr. Bingham said, do you have to write them a letter every time a car comes in and tell them where it goes?

577 A. Well, as soon as the train comes up to Granite City from Madison, Illinois, each morning we get a consist of the train and then issue a switch list immediately to the foreman of the crew. This switch list shows the spot where we desire the car placed.

Q. Your company is in competition with Staley in the corn product business?

A. Yes, sir.

Q. And with other companies that testified?

A. That is correct.

Mr. BURCHMORE. I don't mean to leave out any points, Mr. Commissioner, but I think that covers it.

By Com. PATTERSON:

Q. This Madison, that is a regular terminal for the Terminal Association of St. Louis, isn't it? It is where all trains start from?

A. It is the classification yard, Mr. Commissioner, of the Terminal Railroad Association.

Q. Where all trains start from?

A. Yes, sir.

Q. This train that comes to your plant, after they finish your work do they go on somewhere else?

A. Yes, sir; they serve other industries, at Granite City, after they finish at our plant.

Com. PATTERSON. That is all.

By Mr. BURCHMORE:

Q. And if you had more cars would they spend more time at your plant?

578 Com. PATTERSON. Well, he does not have more cars. Let's deal with what he has.

Mr. BURCHMORE. Well, all right.

By Mr. BURCHMORE:

Q. Some days you have more cars than other days, I suppose?

A. Oh, yes.

Q. And on days that you have more cars do they perhaps spend more time there than on days when you have a few?

A. It would be natural to assume that; yes, sir.

By Com. PATTERSON:

Q. But they still go on and do their other work?

A. They still go on and do their other work; yes, sir.

By Mr. BURCHMORE:

Q. They would not, however, if you got so many cars that they couldn't go on and do some other work?

A. No; not at all.

(Witness excused.)

Mr. BURCHMORE. Mr. Dellert. This is the last witness.

Com. PATTERSON. All right.

HAROLD J. DELLERT was sworn and testified as follows:

Direct examination by Mr. BURCHMORE:

Q. Your full name and the city where you reside?

A. Harold J. Dellert, Chicago, Illinois.

Q. With what company are you connected?

579 A. Allied Mills.

Q. And what is your position with that company?

A. Assistant to the general traffic manager.

Q. How long have you been in the employ of that company?

A. Sixteen years.

Q. And who is your general traffic manager?

A. R. V. Craig.

Q. Was Mr. Craig invited, do you know, by Mr. Burwell to testify in this case?

A. Yes, he was; but because of sickness he was unable to come.

Q. And did you come down by his direction or at his request to carry out the invitation of Mr. Burwell to testify?

A. That is right.

Mr. BURCHMORE. I will state, Mr. Commissioner, that Mr. Craig testified at the hearing in March 1938, before Examiner McElroy, in the State case, and I think Mr. Dellert will probably cover the same matters.

By Mr. BURCHMORE:

Q. Are you familiar with his testimony at Springfield?

A. Not very much; no.

Q. Well, now, what is your company's business?

A. Feed manufacturers and soybean processers.

Q. Where are its soybean plants?

A. Peoria, Illinois, Taylorville, Illinois, Omaha, Nebraska, and Portsmouth, Virginia.

580 Q. And do you have also certain feed plants and are you in the feed business?

A. That is right; yes.

Q. In the soybean business state whether you are in competition—whether or not you are in competition with the Staley Company?

A. Well, I would say only insofar as the buying is concerned. In other words, the products is used in our own feed manufacturing.

Q. Precisely, but let us examine that just a moment.

A. In other words, we are purchasers of soybean meal.

Q. Yes; but the soybean meal that you purchase and that you use and that you produce, what commercial disposition is made of that? Where does it find its ultimate market?

A. Well, we use it entirely in our feed mixing.

Q. And the feed that you mix gets ultimately to the farmer or stock grower?

A. That is right.

Q. And the feed he gets comes through your company may be in competition with feed that somebody else makes that uses Staley's soybean meal?

A. Well, I don't think they mix. Live stock feed itself is directly in competition with soybean meal.

Q. But if Staley—I must argue with my witness here a little bit and find out. Unless you make a superior product, it oc-

581 curs to me——

A. We think we do.

Q. Well, we think we make a superior product and that our soybean meal may get into feed. Does it get into feed?

Mr. LE FORGEE. Well, assume they are both right.

By Mr. BURCHMORE:

Q. What facilities do you have now at your Omaha plant?

A. Well, I have never been to Omaha, I am not familiar with that plant.

Q. I meant to ask about your Peoria plant. I am sorry.

A. How do you mean?

Q. Does it have tracks?

A. Yes; approximately two and a quarter miles.

Q. And are there a number of those tracks?

A. Nine tracks.

Q. How many loading and unloading locations?

A. Well, we have two loading tracks at the feed mill, two unloading tracks at the feed mill, two unloading tracks at the elevator and one loading track.

Q. And what railroads have physical track connections with your track?

A. The P. & P. U. and the Peoria Terminal.

Q. Do these railroads switch cars in and out of the plant that come from the various——

A. The P. & P. U. does all the switching within the plant.

582 Q. Does that company place the cars at the loading and the unloading points?

A. They do.

Q. According to your request and desires as to where they should go?

A. That is right.

Q. And is there any charge made for this placement at the loading and unloading points?

A. None at all.

Q. It is included within the compensation of freight rates?

A. That is right, in the line haul rate.

Q. If there were any proposal to impose a charge for the placement at either of those plants, would you want to bring data and evidence in defense against such a proposal?

A. I am sure we would.

Q. And you have known of no such proposition?

A. No.

Q. Are you informed of any other soybean or other type of industry, other than Staley, where there is a charge imposed analogous to this $2.50 charge that we are inquiring of here?

A. I don't know of any.

Q. Is there anything further, Mr. Dellert, that you can say?

A. I don't believe so; no.

Mr. BURCHMORE. That is all our direct.

Com. PATTERSON. Cross-examine?

583 Mr. SMITH. No.

By Com. PATTERSON:

Q. Do you know anything about what is involved in the switching at the Staley plant?

A. Well, yes; I know that regarding the $2.50 spotting charge——

Q. You know they pay for it?

A. That is right, but I don't know anything as to their operation.

Q. All you know is that they pay for it?

A. That is right.

Com. PATTERSON. That is all.

(Witness excused.)

Mr. BURCHMORE. Thank you, Mr. Commissioner, that is all of these witnesses who wanted to get away.

Com. PATTERSON. We had a yardmaster on the stand. We hadn't finished with him.

Mr. BURCHMORE. Yes, Mr. Le Forgee was about to cross-examine him, I think.

Com. PATTERSON. Yes.

Mr. BURCHMORE. While he is coming, I have here my copy of that lease you spoke of, which was approved by District Judge Briggle of Springfield, and District Judge Davis at St. Louis, before it was entered into; and I wanted to invite your attention to the fact that the agreement itself was dated June 1, 1938, but recites within its terms that it is, in fact, an agreement which was

584 adopted December 10, 1937, and has not yet been placed in its final form. This is my copy. The original is in the record—I don't mean the original; there is a certified copy in the record of the Commission.

Com. PATTERSON. Who can furnish information for the record as to the terms of this agreement?

Mr. BURCHMORE. Well, I think, sir, it will speak for itself as to its terms.

Exam. WEAVER. Someone that participated in the negotiations that led up to this contract.

Mr. BURCHMORE. Well, I will inquire into that and see who we could furnish.

Com. PATTERSON. You know about it and I presume some of the officials of the Wabash know about it.

Mr. BURCHMORE. Just a moment.

(Discussion outside the record.)

My understanding, if the Commissioner please, is that this lease was negotiated by Superintendent Haney with Mr. Burwell, and Mr. Haney has passed away, as you gentlemen know. It was submitted to the court at St. Louis, I believe, by the general counsel—Mr. Strasser can say—and was submitted to the court at Springfield because the court has jurisdiction of the property, you understand.

Com. PATTERSON. Yes.

Mr. BURCHMORE. Not for any other reason. The receivers were reporting to the court. Mr. Burwell is here to be examined.

Exam. WEAVER. He will be called later on, won't he?

585 Mr. BURCHMORE. Yes, I expect to; yes, sir.

CHARLIE CURRAN resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. LE FORGEE:

Q. Refreshing your recollection since you were on the stand this morning, what is your position?

A. General yardmaster, Wabash Railway, in Decatur.

Q. In Decatur, Illinois?

A. Yes, sir.

Q. In the discharge of your duties what is your jurisdiction over the yards here?

A. Entire supervision over the Decatur yard and subordinates working under me.

Q. Does that include the employees?

A. Yes, sir.

Q. Who are engaged in switching?

A. Yes, sir.

Q. Does it include the switch engines?

A. Yes, sir.

Q. How many are there?

A. Twenty-one at the present time.

Q. Are they divided into any classification?

A. Yes, sir.

Q. What?

A. Yes, sir.

586 Q. What is that classification?

A. Revenue and nonrevenue.

Q. What do you mean by nonrevenue?

A. A switch engine that does switching for a company.

Q. What do you mean by revenue?

A. A switch engine that does switching for industries for charges.

Q. Illustrate it, please?

A. Well, I dont just get exactly what you mean.

Q. Define what the duties of these engines are with reference to the patrons they serve?

A. Well, they are assigned to do work in different parts of the yard where we have industries, where we have trains to switch and make up.

Q. Is that a revenue or nonrevenue engine?

A. It is a revenue.

Q. How many corporations have you in which are manufacturing industries that those engines perform duties?

A. We have industries at the number of 52. They don't all manufacture but nevertheless they are classed as industries.

Q. Well, what are the corporations or companies which these engines serve for revenue?

A. Well, we serve them all for revenue.

Q. What do you mean by "revenue," an absorption under a switching arrangement?

587 A. No; it is one of the necessities of the railway company to have a switch engine to take care of the handling of the stuff that comes into Decatur.

Q. Very well. Of that stuff that comes into Decatur, what do you regard as being handled by what you have designated as revenue engines?

A. Well, any shipment that you collect charges for.

Q. Well, what are those corporations from whom you collect revenue?

A. Well, they are all of them. Do you want me to name them all?

Q. Yes.

A. Give you the names of all of them?

Q. All you can think of.

A. Well, I can start out with the Polar Ice Company.

Q. How do you collect revenue from them?

A. Switch cars to them.

Q. Well, what charge do you make for that?

A. Well, we don't make any charge if the car arrives on the Wabash.

Q. I am assuming that the car arrives on the Wabash for a minute.

A. We don't make any charge, we spot the car to them.

Q. You mean by a revenue engine that if a car comes in over the Illinois Central or the Pennsylvania, then you take that car from the interchange track and carry it down to the Polar Ice Company, or the consignee?

588 A. Yes, sir.

Q. And that under the switching arrangement you have with the carrier delivering that car to you, it is paid for out of the freight which the connecting carrier receives, isn't it?

A. Yes, sir.

Q. And that is what you mean by a revenue engine, isn't it?

A. Yes, sir.

Q. And you don't mean anything else by a revenue engine, do you?

A. No.

Q. Now, by a nonrevenue engine you mean an engine which goes in there and switches cars for the convenience of the railroad company, don't you, as well as Wabash cars that are to be delivered, placed and spotted?

A. Switch company material.

Q. Yes.

A. Wabash Railway Company material.

Q. Yes; and does that include the placement and spotting of cars for—cars that come in on the Wabash?

A. Yes, sir.

Q. You begin your—pardon me just a moment, withdraw that question. How many engines have you in the service of the engines for revenue?

A. Eighteen.

Q. And how many have you for engines that are engaged in nonrevenue service?

589 A. Three.

Q. Are they what you call bum engines?

A. Which ones the revenue or the nonrevenue?

Q. The nonrevenue.

A. Well, we call them job engines, supply engines.

Q. Have you such a thing employed down there as a bum engine?

A. Yes, sir.

Q. What are they?

A. Revenue engines.

Q. What is their business?

A. To go any place we send them.

Q. And when they perform that service they are a free lance and go somewhere else and work, do they?

A. They are always working.

Q. Yes; but assuming that they are assigned to a duty and you send them to the duty, and when they have performed that service, then they come back and go into some other service perhaps at the other end of Decatur?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. And that engine is not under the control of any consignee but constantly and always is under your charge, supervision and direction, isn't it?

A. Yes, sir.

Q. And that kind of engine, and that type of an engine,
590 is what you use in handling Staley cars, isn't it?

A. Yes, sir.

Q. As a matter of fact, you never have employed any of the other types of engines for service in the Staley yards, have you?

A. I don't just know what you mean by other types.

Q. Well, let us put it this way: The three engines which you have designated are the engines which always perform the service for the Staley Company, aren't they?

A. Yes, sir.

Q. Yes. Now, when a train of cars comes in into—withdraw that question. When carload lots come into Decatur for the A. E. Staley Manufacturing Company, it is usually in a train of cars, isn't it?

A. Yes, sir; except when it comes from interchange points.

Q. Yes; we will get to the interchange cars and tracks in just a few minutes. But when they come into Decatur over the Wabash Railway Company, they usually come in a train of cars, don't they?

A. Yes, sir.

Q. And that train of cars is of varying lengths?

A. Yes, sir.

Q. Sometimes forty cars, sometimes fifty, and sometimes sixty or more?

A. Yes, sir.

591 Q. And the number of cars contained in that train of cars that comes in vary anywhere from five to fifteen cars for the Staley Company?

A. Well, they vary. I wouldn't say five to fifteen, but they vary. It might only be one.

Q. Yes.

A. Might be twenty.

Q. In other words, there is no fixed rule by which a railroad train of cars comes in for Staley, is there?

A. There hasn't been in the last twenty years or fifteen years.

Q. Well, I don't think, Mr. Curran, we will go back before that. At any rate you don't recall in the instant present or in the immediate past of a solid train load of cars coming in for Staley, do you?

A. No.

Q. And you do recall that the train, when it comes in, is composed of numerous and divers freight cars which are intended

and consigned to a large number of people other than the Staley Company, don't you?

A. Yes, sir.

Q. And when they are brought into Decatur where is that train placed?

A. Placed in the yard.

Q. What part of the yard?

A. That depends on where we wish to yard it.

592 Q. Very well. Have you some one of several yards where you would place it?

A. Yes; we have about four places where they head in.

Q. Is that optional with you as the controlling factor of the majority of that business, into which yard it goes?

A. It is optional with me and subordinates under me.

Q. You usually control, don't you?

A. Yes, sir; to a certain extent.

Q. And when you have designated the yard, you also designate the tracks, don't you?

A. Yes, sir.

Q. Yes; that is a matter that you have control of and the consignee has nothing to do with it, has he?

A. Nothing.

Q. And when the car is placed there, the engine which has brought it into Decatur is disconnected and goes to the roundhouse?

A. Yes, sir.

Q. Thereupon you, in the discharge of your duties, undertake the breaking up of that train, don't you?

A. Yes, sir.

Q. And you do that with reference and for the benefit of all the consignees who have cars in that train?

A. Yes, sir; and the truck loads, too.

Q. What?

A. And the truck traffic.

593 Q. In other words, there is a certain number of those cars possibly going on from that train to Chicago?

A. Yes, sir.

Q. Or Detroit, or, if west, to Kansas City and St. Louis or some other point?

A. Yes, sir.

Q. Now, when you start to break up that train, you break it up as you desire to break it up, don't you?

A. Yes, sir.

Q. And you usually select a yard and a place where you will have the free operation and movement for you to conveniently and decently discharge the duties which are necessary?

A. Yes, sir.

Q. Now, you begin a classification, don't you?

A. Yes, sir.

Q. By "classification" do you mean that you classify the cars that are going to the consignee in Decatur, Illinois?

A. Yes; we keep Decatur cars separate.

Q. And you put those on a track to themselves?

A. Yes, sir.

Q. And that is with reference to Archer-Daniels?

A. Well, it depends on what the commodity is. If it is grain to Archer-Daniels we would not classify that with Decatur cars because it has to go on the federal grain inspection track.

Q. So that in the first instance you would take that over
594 to the Federal grain inspection track?

A. And set it aside in another classification to go to the grain track.

Q. As a matter of fact, if there were cars in there for anyone of seven or eight of the grain buyers in the City of Decatur, you would, without discussion with any one of them, take those cars over and place them on the federal grain inspection track, would you not?

A. Take all of them and put them on the federal grain inspection track, yes.

Q. And that is done regardless of whether they are Staley's or Archer-Daniels or Spence Kellogg's or Evans & Company or Bennet's or anybody else?

A. Due to the volume of the Staley business, we don't mix the Staley business with the brokers' business.

Q. Very well. But all of the cars go over there for grain inspection, don't they?

A. Yes.

Q. And when they go over there, as a matter of convenience and in breaking up that train and for your own convenience, you keep the Staley cars as much together as you can?

A. We keep them together.

Q. Yes; and do you do the same for the cars for Spencer Kellogg?

A. We don't care about them, we put them with the brokers.

Q. Yes; and the cars which are intended for the Archer-
595 Daniels-Midland?

A. They go with the brokers.

Q. When you have got those over there and have them segregated, you begin at that point to the distribution of those cars, do you not?

A. After we get the releases.

Q. Yes. What do you mean by "releases"?
A. I mean the grain releases.
Q. Who do you get that from?
A. Get it from the freight agent.
Q. Where does the freight agent get it?
A. I don't know where he gets it: I suppose it is——
Q. What is a release from the freight agent? What does it provide?
A. He gives us a release in the form of a message and tells us the cars have been inspected and are ready to be delivered.
Q. Yes; and then what do you do?
A. Well, we switch the cars out and make the delivery; obey orders.
Q. In other words, you take the Staley cars from that point and you pull or draw them over to the plant of the Staley Company, don't you?
A. We first classify them in the tracks that we have set aside for the three elevators.
Q. Yes.
596 A. Because of the volume of the business of that company on in-bound grain.
Q. In other words, when you are classifying the cars, you set off the cars which go to elevators A, B, and C, is that correct?
A. Yes; and the date order in which they arrived.
Q. And when you have done that, then—you do that of your own volition and nobody directs you to do it, do they?
A. It is necessary on account of the demurrage rules.
Q. I did not ask you whether it was necessary. You do that because it is a method by which the railroad company, with you as its representative, handles that business, isn't it?
A. Yes, sir.
Q. Now, when you have done that, you take the cars which are intended for elevator B and you take them over to the elevator to which they are consigned, don't you?
A. Yes, sir.

By Com. PATTERSON:

Q. You stop at the Burwell Yard first, don't you? You put them in——
A. Yes; we classify them there.

By Mr. LE FORGEE:

Q. Do you do that where the grain is for the elevator?
A. Well, if for elevators A, B, and C.
Q. Yes; and that is where you take them directly——
A. In other words, we keep all the "B" together and all the "A" together and all the "C" together.

597 Q. And that is where you take them immediately after the classification, isn't it?

A. Yes.

Com. PATTERSON. I want to get this straight in my mind.

By Com. PATTERSON:

Q. First you take and classify them in the Burwell Yard; is that what you said?

A. A, B, and C.

Q. Yes, all of them that go to Staley?

A. Yes, sir.

By Mr. LE FORGEE:

Q. And the rest of them which are intended for the other grain people you put on another track and put them indiscriminately, don't you?

A. We take them from the grain inspection track set aside for the brokers.

Q. Yes. So that, as a matter of fact, there are tracks set aside for each one of those representative deliveries, aren't there?

A. Yes, sir.

Q. And from the point where you have so assembled them for delivery, you proceed to make the delivery?

A. Yes, sir.

Q. And when you take that to elevator A, B, or C in the Staley plant, under your direction and without any intervention by the Staley Company, you proceed with the operation of those cars in your own way through that yard and into the switch that

598 leads to the elevator, don't you?

A. Through the system that we have arranged.

Q. Yes.

By Com. PATTERSON:

Q. You take one less hitch on them, though, when they go to the other plants other than Staley, don't you?

A. Where?

Q. In other words, when you classify them out of the grain yard you move them direct to these other plants other than Staley; they don't go to the Burwell Yard?

A. They go to the Federal grain inspection track, which is located on the other part of the yard.

Q. Then direct to the industry?

A. Then direct to the industry, with the exception of Archer-Daniels. We don't go to that industry.

Q. You give them to somebody else?

A. We deliver them to the Illinois Central.

Q. Which, as a matter of fact, is more than—one more hitch than the Staley cars?

A. Yes; it is.

Q. So, as a matter of fact, you put more time in labor and work in delivering those cars than one of the Staley cars, don't you?

A. Well, I always figured it about the same.

Q. Well, there is a lot of movement required in the delivery of those cars, isn't there, as you stated a moment ago?

A. Yes; to the Illinois Central.

599 Com. PATTERSON. Yes, that goes through an interchange.

Mr. LE FORGEE. Very well.

By Mr. LE FORGEE:

Q. However it goes, there is that extra service?

A. Yes.

Q. Now, when you have placed those cars at the elevator of the Staley Manufacturing Company, you go away and leave them, don't you?

A. Yes, sir.

Q. During the entire operation that you have had of those cars from the time you have broken up that train until you have left them at the elevator or elevators to which they were consigned, there are no directions, there is no interference, there is no interruption, by the Staley Company, in telling you what to do or how to do it, but you do it in your own way and by your own methods, don't you?

Com. PATTERSON. Are you telling him or asking him?

Mr. LE FORGEE. I am asking him.

Com. PATTERSON. O. K.

Mr. LE FORGEE. And I would like an answer.

The WITNESS. That is the way we do it.

Mr. LE FORGEE. Yes.

The WITNESS. Until they get the car empty and we take it out.

By Mr. LE FORGEE:

600 Q. But that is the fact about it, there is nothing imposed by Staley in directions or any of its physical operations, to which you can refer, created by Staley in the management of those cars, is there?

A. No; we handle the grain.

Q. If there is a delay in the movement of that car from one switch track to another, is that the result of what Staley told you to do?

A. No. Delay from one switch track to another, is it? I just don't know——

Q. Yes; as to when it is taken or the switch track into which it is placed, is that because of something Staley told you to do?

A. No; it would not be on account of anything he said to do. He would be after us wanting to know where it was.

Q. Yes. So, as a matter of fact, the movement of that car and the delay incident to holding it up on the switch track, and the length of time you held it up, would be dependent and resting alone upon the responsibility of you as the superintendent and the men in handling the car, wouldn't it?

A. Yes; it would.

Q. And over which the Staley Company had not the slightest control or interest?

A. We try not to have that happen.

Q. Yes; I understand, but if it just does happen, it is the
596 result of the operation of the car by the employees of the Wabash Railway Company and no one else; is that right?

A. Yes, sir.

Q. This engine that goes into the Staley Manufacturing Company, who sends it in there?

A. Well, it never comes out [laughter]. It is continuous with the exception——

Q. Well, let's get the exception. Perhaps we will have another burst of laughter.

A. With the exception of the outside switching that he does.

Q. Yes.

A. What I mean, it is a round the clock job that we have there.

Q. Yes. In other words, he goes in there under your direction, does he?

A. Yes, sir.

Q. With a view of making the deliveries under the arrangement indicated or disclosed by the bill of lading and way bills, and, if he has nothing more to do, he comes out and you put him somewhere else, do you?

A. Yes, and his duties require him to go other places, too?

Q. Yes.

A. But he——

Q. Now, you have described the method and manner of the placement of those cars and the delivery of the A. E. Staley cars. If you have five cars there for the Mueller Manufacturing Company, what do you do with those from that classification?

602 A. Well, they are placed in the classification of the Decatur cars.

Q. All right.

A. The engine from the west end, which is the industrial part of the town, comes and gets them, takes them out and sets them.

Q. How far do they take them?

A. Well, it is about a mile and a half out there, I imagine, from where they get them.

Q. What do you do with them when you get them out there?

A. Take them out there and place them for the Mueller Manufacturing Company.

Q. Do you put them at a point where there are openings in the factory or plant convenient to loading or unloading, either at the building or on a loading platform?

A. Well, it depends upon the commodity. As a general practice, we know where the stuff goes.

Q. Without being told?

A. Without being told.

Q. And you have been advised and know about the handling there in that sense for a period of twenty-five years, haven't you?

A. A long time.

Q. Yes; and when you start to deliver stuff to Metzler & Company, you handle it in the same way, don't you?

A. Yes, sir.

Q. And when you take it down to any of those places,
603 you immediately proceed to spot the car at a point convenient to a loading platform or an entrance to the buildings, don't you?

A. Metzler will tell us what he has got coming. He is always looking for cars ahead of time, perishable stuff.

Q. And trouble?

A. What? —

Q. Looking for cars. I interjected something that I apologize for. But when he is looking for cars he tells you what is coming?

A. And where he wants them set.

Q. Where he wants it and he gives you directions where to put it, doesn't he?

A. Yes, sir.

Q. And you take it down and place it there, don't you?

A. Yes, sir.

Q. And if another car comes along that is to go into that same door, you go back there and switch other cars after you have got it unloaded and push the other one in and get that right, don't you?

A. I have got to wait until we have got room for it.

Q. Yes; but when you have room for it and he has unloaded the other car, then you pull that out and put the other one in, don't you?

A. Yes.

Q. And you do that frequently until whatever ship-
604 ments he has, bananas and produce, have been placed at the plant and unloaded, don't you?

A. Yes, sir.

Q. No; as a matter of fact, Mr. Curran, the movement of those cars from the point where the track—where the cars are placed and the train is broken up, when they are taken into the Staley Company, entails no more work, no more labor, no more trouble, than it does at any other industry the Wabash serves in the City of Decatur, does it?

A. No; only that they have more of them.

Q. Yes. In other words, if any one of them, all of these shippers whom we have named—and I think you said fifty-two—if the volume of traffic which flowed into their plant was increased, correspondingly there would be increased labor in placing and handling the cars?

A. Yes; there would.

Q. And that is what you mean?

A. Yes.

Mr. LE FORGEE. That is all.

Com. PATTERSON. Any more cross-examination?

Mr. LOVERING. Yes; I have a few questions, Mr. Commissioner.

By Mr. LOVERING:

Q. Mr. Curran, with reference to those trains that occasionally make up in the Wabash yard, are those usually empties from elevator C?

A. No; they consist of local trains and through Chicago trains.

605 Q. On the lease tracks?

A. Yes; we do it for room.

Q. Do most of the Wabash trains arrive in that east yard or——

A. Well, the majority of them do, yes, but we have other places. The Memphis trains all arrive in the ice house yards.

Q. When you break up those trains do you do any classifying now of the Staley cars in the east-bound yard?

A. Well, the classification that we make is that all miscellaneous carloads for the Staley Company and empty tanks are delivered to No. 1 Burwell.

Q. I mean, before you get that far. When you are breaking up a train out there in the east-bound yard, do you switch out those going to Staley's and then get them together in one cut and take them up and shove them in the Staley plant?

A. All those that we handle from the east end we switch direct into the Burwell yard.

Q. In breaking up the train?

A. In breaking up the train; but those handled on the west end of the east-bound yard have got to be what we call passed out to them at the east end so they can hand them in, which is on account of us not having access to the west end of the Burwell Yard.

Q. And when you do that classifying of a train which is in the east end of that yard, you do that classifying farther up so that it can kick those cars in on that lead?

606 A. Yes, sir.

Q. Do you remember about how long that lead is?

A. Well, it will hold about fifteen cars. I want to correct one thing there. I said we did not have access to the west end of Burwell Yard. We do, but it is a switch-back movement.

Q. It is against the normal flow of traffic to the plant?

A. Yes, it is. From the west end to the east end of the yard it is.

Q. In answer to Mr. Strasser you spoke about having known of many cars which were billed before being removed from the plant. Is it equally true that you also remove quite a number of cars without billing, before the billing is received?

A. I did not quite understand that.

Q. I think perhaps I did get that a little bit mixed up for you. Do you move cars out of the plant without billing as well as after receiving billing?

A. Yes; we take them out of the way for our own convenience.

Q. Do you take out as many that way, before the billing has been received, as you do after the billing has been received?

A. Well, it varies. I couldn't say we took more or——

Q. A fifty-fifty proposition, do you think?

A. What?

Q. Do you suppose it would be a fifty-fifty proposition?

A. Well, I imagine it would be sixty-forty; sixty of them billed.

607 By Com. PATTERSON:

Q. That is, forty percent of the cars coming out of the plant are no-bills?

A. Yes, that is about what I would say.

Mr. BURCHMORE. As you defined that term a while ago?

Mr. PATTERSON. Yes, as he understand it.

The WITNESS. Mr. Examiner, I would like to make one correction there on the instance I talked about the engine in the Staley plant not coming out. What I mean by that is that we have main-line hostler service that takes the trade engines to the point.

Com. PATTERSON. Yes, I realize that.

The WITNESS. Of course, the engines go in and out of the plant yard right along.

Com. PATTERSON. I realize that.

The WITNESS. I did not want you to get the wrong impression.

Com. PATTERSON. No, I didn't. As I understand it, different engines work in the Staley plant twenty-four hours a day and the hostler makes the trade and brings the engines to the point.

The WITNESS. We send that engine any place we want, deliver to the B. & O., deliver to the Illinois Central.

Com. PATTERSON. But it takes twenty-four hour service a day to serve the plant.

The WITNESS. Yes.

608 Com. PATTERSON. And you make your shift in the plant?

A. Yes, that is right, at the designated points.

Mr. BURCHMORE. No.

Com. PATTERSON. Now, I think he knows what he is doing.

Mr. BURCHMORE. But there has been three different things said here and I would like to have no misunderstanding. I understand he has just said, in response to your questions, that this engine which he first described as being within the plant all the time, as a matter of fact goes off down to the B. & O. and Illinois Central and various other connections and does work at other places and then comes back.

The WITNESS. Takes cars to connecting lines.

Mr. BURCHMORE. Then it isn't within the plant all the time.

Com. PATTERSON. Oh, no, it isn't in the plant all the time but he keeps an engine in the plant twenty-four hours a day.

Mr. BURCHMORE. Are you telling me?

Com. PATTERSON. No; I am telling you how I understand the witness.

Mr. BURCHMORE. I don't know that that is right.

Com. PATTERSON. Now, this engine may take cars from within this plant to the B. & O. or some other place, but comes back to the plant?

The WITNESS. Yes; we have a designated point in there

609 where the men go on the work, but we have designated where to go.

Com. PATTERSON. I don't think there is any misunderstanding about it.

Mr. BURCHMORE. There was on my part.

By Mr. LOVERING:

Q. Now, in speaking of these fifty-two other industries here in Decatur where you provide spotting service, you mentioned the Mississippi Valley Steel Company and, as I recall it, you said they had more tracks, I think you said five.

A. Five short tracks. You can get twenty-two cars in the plant.

Q. And the number of tracks you mentioned, I think, was greater than the others you named, is that correct?

A. Yes, that is correct, but they are short tracks.

Mr. LOVERING. Is that Exhibit 2 here? [Exhibit produced.]

By Mr. LOVERING:

Q. Mr. Curran, will you step around here and just point out to the Commissioner and the Examiner where those tracks are?

Com. PATTERSON. What tracks are you looking for?

The WITNESS. The Mississippi Valley.

By Mr. LOVERING:

Q. How many tracks are there?

Com. PATTERSON. I was down there and looked at them within the last couple of hours. I know where those five tracks are.

The WITNESS. Right there [indicating].

By Mr. LOVERING:

Q. What is the maximum capacity of any one of those tracks?

610 A. Well, as I recall, it is about ten cars. You can get twenty-two cars in the five tracks.

Q. Twenty-two cars on the five tracks?

A. Yes.

Q. In doing some of that team track work, you used a phrase there that I missed. You spoke about cutting in a car. Was that the phrase you used?

A. I said that we would place a car where the man wanted it set. He might want it set in the middle of the Church Street team track. If he did, why, we would place it down there. He might say, "I would like to have this close to Church Street." If he said that, we would place it there.

Q. Do you furnish that service to a track that had quite a number of cars on it and the point where this man wants the car put is going to bring it in the middle of that cut of cars already standing on it?

A. Well, we try to suit the shipper.

Q. But would you go and——

A. If the track was full and you couldn't get any more in there, we would probably just put it in on the end and let it work its way down.

If that track would hold fifteen cars and you only had ten there, and the man wanted that car put at a point which would place it in about the middle of that cut of ten, would you give him that service?

611 A. Yes, we would place it there for him.

Q. How often would you do that?

A. Oh, not very often, but we sometimes have that kind of a request.

Q. Can you give us just an estimate, once a month or once a week, once a year?

A. Well——

Q. I don't know just how often that yould happen.

A. Here is what happens. The foreman will give them to him and there is no hub-bub about it. He would just go and do it.

Com. PATTERSON. That depends upon how liberal the foreman is.

The WITNESS. Sure, the yardmaster isn't there watching every move.

Com. PATTERSON. But the foreman would not be required to do it?

The WITNESS. No, the foreman would not be required to do it.

Com. PATTERSON. If he did it, he would do it; and if he did not do it he would not be required to do it.

The WITNESS. No.

Mr. LOVERING. Nothing more.

By Mr. GOEBEL:

Q. Mr. Curran, you were speaking about this engine going down to the Baltimore & Ohio in the case of business going to or moving out of Staley's place over the Baltimore
612 & Ohio. Where do you interchange with the Baltimore & Ohio?

A. We interchange with the Baltimore & Ohio Railroad at a point about 50 feet or 100 feet west of Jasper Street.

Q. On both in-bound and out-bound business?

A. The out-bound business is delivered on what we call the coal track, which is located west of Broadway Street, west of the depot.

Q. You say that is the in-bound business?

A. That is the business coming to us from the Baltimore & Ohio.

Q. That is the in-bound of Staley?

A. Yes.

Q. And the out-bound for Staley, where do you deliver that to the Baltimore & Ohio?

A. You have an interchange track designated in your yard. We get into that over a lead that is a continuation of the lead into the west—southwest gate of Staley. We have a connection at Jasper Street, our east-bound storage yard, where we can cut right across and make your delivery. Before we had that we had to go up to the depot with your cars and shove them down your main track into your yard.

Q. Well, have you had that since you have been doing the switching, since June 25, 1936?

A. As I recall it, that connection was put in for us about 1927.

Q. 1927?

A. Somewhere around in there.

613 Mr. GOEBEL. That is all.

By Mr. LOVERING:

Q. Mr. Curran, in the particular cars out of the Burwell Yard, of those leased tracks, are there times when you move cars out of there prior to cars which came in earlier, say, the previous day? As I understand the operation there, ordinarily the cars which are first classified on tracks 1, 2, 3, 4, and 5, and so forth, are the first ones to move out of the west end. Is that the normal operation?

A. We keep taking them out of the west end all the time.

Q. Keep feeding in the east end and taking them out of the west end?

A. And we watch the date order of the cars, by a check that is taken twice a day and given to the foreman.

Q. Now, are there times when a car has been fed in the east end, for some reason or other will be taken out ahead of cars—prior to cars ahead of it?

A. That might happen on track No. 1, but not on grain.

Q. It would not happen on A, B, and C?

A. No, not on A, B, and C.

Q. On cars going to A, B, and C?

A. A, B, and C.

Mr. LOVERING. That is all.

Com. PATTERSON. Any more cross-examination?

(No response.) That is all.

(Witness excused.)

614 Com. PATTERSON. Do the Wabash have any other witnesses?

Mr. STRASSER. We have some witnesses here whose attendance was requested by Mr. Lovering. I don't think I have anything more to offer on behalf of the Wabash Railway at this time. I might put the superintendent on and ask him one or two questions.

Com. PATTERSON. Very well.

Mr. STRASSER. Take the stand, Mr. Johnston.

C. A. JOHNSTON was sworn and testified as follows:

Direct examination by Mr. STRASSER:

Q. Please state your name.

A. C. A. Johnston.

Q. You reside at Decatur?

A. Yes, sir.

Q. You were recently appointed superintendent at Decatur?

A. Been here thirty days.

Q. Succeeding Superintendent Haney?

A. That is right.

Q. Prior to coming here what has been your railroad experience?

A. I worked for the Wabash sixteen years and prior to that for the Pennsylvania Railroad seven years. I have been superintendent of the Detroit Division, St. Louis Terminal Division, Montpelier Division, and came here a month ago.

Q. Now, when you were at these various other plants as superintendent, did you have occasion to inspect large industrial
615 plants and observe how the work within the plant was done?

A. I was familiar with all of our industries.

Q. There are a number of large industries at St. Louis?

A. Yes, sir.

Q. And at what other points?

A. We had large industries at St. Louis, Lafayette, Ft. Wayne, Toledo.

Q. Detroit?

A. Detroit.

Q. And since you have been here in Decatur, have you studied the operations at the A. E. Staley Manufacturing Company plant?

A. I have.

Q. Observed how the work was done there?

A. Yes, sir.

Q. And you think you are reasonably familiar with it?

A. Yes, sir.

Q. Have you made any comparison between the manner in which that work was done and the operations carried out, as compared with similar work at other plants?

A. I naturally compared Staley's work with the work at other plants.

Q. And how does it compare, what conclusions did you reach?

A. My first impression, after familiarizing myself with the plant, was that, first, the plant, the physical condition of the plant was very good. The tracks are in good condition,
616 laid with good material, and well maintained. The alignment is good and there are very few close clearances or sharp curves or hazardous working conditions, all of which makes for easier and expeditious switching. My conclusion was that the plant itself, as well as the manner of doing the work and lack of interference from the Staley Company, was very good compared with other plants that I am familiar with.

Q. Would you say it is better than any other plant that you have observed?

A. It is one of the best I have seen.

Q. Would you limit that observation just to the Wabash Railway System or is the same true as compared with similar plants

on other lines that you have had occasion to become familiar with?

A. I would rather stick to the Wabash Railway.

Q. Now, some question was put to Mr. Curran about the manner of handling engines that service the operations there at the Staley plant. I wish you would give us a statement as to just how those engines are handled?

A. Well, as Mr. Curran stated, he is now working twenty-one engines, which, of course, fluctuates with the business.

Q. That is throughout the Decatur switching district?

A. In the Decatur yard, including the engines that do the Staley work, and since I came here a month ago we have taken off five, so all there is to it is the number of engines fluctuates with the work. We have definitely assigned engines that do the
617 work at particular points and are named, such as the east-bound lead, or east lead engine and west lead engine of the east-bound yard, three tracks of freight-house engines, and so forth. We have other engines that are the first engines to be taken off in case of reduction, what we call bum engines, which will work any place to take up the slack. We classify the Staley engines as bum engines, and the number of bum engines in the entire Decatur yard, including Staley, fluctuates with the business.

When I first came here a month ago four engines were taking care of the Staley work plus any outside work assigned to them by the yardmaster. At the present time three engines take care of that work. Those engines, as Mr. Curran pointed out, have a definite point for going on and off duty, which is within the Staley yard. Mr. Curran, as general yardmaster, moves around the yard and visits Staley's once or twice a day. He is familiar with the level of Staley's business and as he goes into the plant and observes the level of Staley's business he will tell them to do all the work in there, that is, do their entire day's work in there, or he will tell them to finish up that work and go to some other point and work for an hour or two hours or whatever time they have left. In other words, these engines take care of the Staley work plus any other Wabash work that is assigned them, and at the present time they have slack time.

As an example, when I came here the engines were occupied almost entirely within the plant. When they took cars out
618 of the plant to be classified, another engine did it. At the present time one of the engines in the plant completes the work and goes outside, classifies those cars and delivers some of the cars to connections. In other words, the time that they spend in and out of the plant doing Staley or Wabash work varies with the level of the business.

By Com. PATTERSON:

Q. You caught them taking a little spot inside the plant?

A. Unfortunately I catch one every once in a while, either in or out of the plant.

Mr. BURCHMORE. (to the reporter). Will you read that?

(Question and answer read.)

The WITNESS. He means, did I ever catch one of them loafing?

Mr. LE FORGEE. I was going to ask for a definition of "spot."

Com. PATTERSON. That means when they get in one place and stay there.

By Mr. STRASSER:

Q. Mr. Johnston, that is liable to happen anywhere, isn't it?

A. Unfortunately that is true.

Q. And that is one of the reasons you have to keep on your toes and keep Mr. Curran on his toes to prevent that sort of thing as much as possible?

A. That is correct.

619. Q. Is it true that so far as Staley operations are concerned, that you are constantly watching to see that any little imperfections are corrected and that the work is done as nearly perfectly as you are able to make it?

A. That is true of any of our operations, including Staley, are subject to analysis at all times, and if we can make a change that will result in improvements we do it, and several such changes have been made in connection with Staley's work since I came here with Staley's cooperation.

Q. Do you believe that you and the Wabash are able to do it as well and perhaps a little better than anybody else?

A. Well, the Wabash Railway hasn't any corner on switching or the quality of men or anything else, but I feel that due to the extent of our facilities or rather to our extensive facilities adjacent to the Staley plant, that we are in a position to do that work as well and as economically, if not more so, than any other railroad.

Q. Is there anything else you want to add that might be illuminating to the Commission on this subject?

A. No; I know of nothing else.

Mr. STRASSER. That is all.

Com. PATTERSON. Cross-examine.

Cross-examination by Mr. LOVERING:

620 Q. Mr. Johnston, since you have been here have there been times when you have had two engines in the plant at the same time?

A. As I stated, when I came here four engines were working,

Q. How many are working at the present time?

A. At the present time three engines are doing the work, with the help of an extra engine two or three times a week, when required, which, of course, is on the heavy days.

Mr. LOVERING. Nothing else.

Redirect examination by Mr. STRASSER:

Q. Mr. Johnston, if the volume of work required it, you would have two engines in there and as many more as might be necessary to take care of the work, would you not?

A. We would be glad to put on as many engines as necessary to take care of the work if we had an increase in business.

Q. Now, in response to Mr. Lovering's question, you said that when you came here you had four engines working out there. His question was whether at any time you had two engines working in there at the same time. I don't believe you answered that specifically. Just state what the situation was.

A. Well, of course, we understand that an engine works a trick, which is eight hours, and, if you have three engines, they work around the plant for twenty-four hours, and, if you work four engines, two engines would necessarily be working in there at the same time.

Mr. STRASSER. That is all.

Com. PATTERSON. That is all.

621 Recross-examination by Mr. BURCHMORE:

Q. Mr. Johnston, I would like to ask, from your years of experience as superintendent, to just make this statement in your own way: Here is the Staley Company, which is a large plant and a large amount of traffic goes in and out and the Staley Company wants its traffic to get to interstate destinations all over the country promptly, and so forth. Now, it is either possible, for the Wabash Railroad to go in and switch that plant and handle their in and out traffic in the ordinary, normal way that you handle other big plants, and without encountering any difficulties or obstructions or any conditions that make it expensive or improper for you to be called upon to do it, or else it isn't. Now, you, as superintendent, just tell us whether you see anything, and if so, what it is, in this plant that makes it unusual or difficult or expensive or appropriate, that it should be charged a charge that nobody else is charged?

A. I will have to tell you, Mr. Burchmore, that—elaborate a little bit on the statement I made a minute ago. In the railroad business we are constantly receiving complaints, and one of our troubles is to do plant switching to satisfy the customer, and at big plants such as we have at Ft. Wayne, Toledo, and St. Louis, when we think we are doing the work properly we are sometimes bombarded with requests for change of plans, and so forth, so

that we sometimes have to go to the mat with them, as we call it, and try to arrange, by a cooperative program,
622. some way that we can go in the plant and do the work and forget about it, without having to continually haggle with the plant superintendent or owners of the plant.

Now, in answer to your question all I can say is that my observation of the Staley plant is that we are allowed to do our work in our own way, which we feel is a good way, without being hampered and interfered with from time to time by the foreman and plant superintendent, and so forth.

Q. Do you see in that plant any condition that the plant is responsible for which could be remedied or changed or improved and which would make it easier and more economical for you to switch the plant than it now is? Is there any particular room for improvement that you note?

A. I don't think of anything right today, though I have thought of a couple things which I suggested to Mr. Burwell and which he acted upon.

Q. Were they adopted?

A. Yes, sir.

Mr. BURCHMORE. That is all.

Com. PATTERSON. That is all.

Mr. SMITH. May I ask one question?

By Mr. SMITH:

Q. Do I understand from what you said that so far as the switching which you are doing at the plant today, you are doing it in your own way?

A. Well, I would have to qualify it to the extent that any
623 industrial work we try to do in a way satisfactory to ourselves, with a view of the needs of the industry in mind, and, of course, if sometimes those things have to be argued out, we feel we have rights in doing the work the way we feel we should.

By Com. PATTERSON;

Q. Have you argued anything out with Staley?

A. Two or three minor—I would not say argued, we have arrived at an agreement on a couple things. My general observation is that we don't have much trouble.

Q. They are ideal customers?

A. We would like to have more of them.

(Witness excused.)

Mr. STRASSER. That is all we have to offer.

Mr. BURCHMORE. Has any other railroad any witness they wish to offer?

Com. PATTERSON. He said not.

Mr. GOEBEL. We might have a witness. I don't know whether this is the proper time for it or not.

Com. PATTERSON. The Baltimore & Ohio?

Mr. GOEBEL. Yes.

Com. PATTERSON. Well, produce him; we will go ahead. We are waiting for a witness.

Mr. BURCHMORE. We are ready to go ahead, too. If you would rather go on in the morning it is all right with us. Would you?

624 Mr. DAGGETT. Well, it doesn't make much difference. I can cover my part now and it won't take very long, I think.

Mr. BURCHMORE. All right.

A. L. DAGGETT, was sworn and testified as follows:

Direct examination by Mr. GOEBEL:

Q. State your name?

A. A. L. Daggett.

Q. What is your position with the Baltimore & Ohio?

A. Freight traffic manager of the Baltimore & Ohio Railroad, Chicago, Illinois.

Q. What are your duties, generally, as freight traffic manager at Chicago?

A. Well, I am in charge of the northwest district, which embraces this district, in charge of rates, divisions, and solicitation.

Q. How long have you been in Chicago, Mr. Daggett, in charge of that territory?

A. About three years.

Q. And I will ask you whether or not during that time you have familiarized yourself with the situation relating to the Staley plant at Decatur, and particularly the proceedings in Ex Parte 104, Part II, involving the Staley plant?

A. I have.

Q. And in connection with that, I will ask you whether or not you have made injury as to the length of time that the

625 Baltimore & Ohio have been serving the plant and the circumstances relating thereto?

A. Why, the Baltimore & Ohio has been serving the Staley plant—and by the Baltimore & Ohio I mean the railroad, the Baltimore & Ohio took over the former C. I. & W.—have been serving the Staley plant for a little over twenty-six years, to my knowledge. Prior to about 1914 I don't know whether the Baltimore & Ohio or Wabash first served the plant, but we have always felt that we sort of had an inherent right to serve the plant.

Q. The records do disclose that in the early part of 1914 we did have a side track entering the Staley plant, isn't that true?

A. That is true, and, in anticipation of development of the industry, which has occurred throughout the period, and in anticipation of sharing in the increased tonnage, we acquired additional property adjacent to our connection and at some great expense, so we have considerable money invested in our facility to reach the plant.

Q. Now, directing your attention, Mr. Daggett, to 1922. At that time what arrangement did the Baltimore & Ohio, or its predecessor, the C. I. & W., have with respect to business which it handled in and out of Staley's plant?

A. Well, first perhaps I should explain that prior to that date the Baltimore & Ohio, or its predecessor, the C. I. & W., and the Wabash individually served the plant. That is my understanding. But subsequent to the date mentioned, 1922, why, we
626 entered into an arrangement whereby the industry has performed the service which we were required to do under our line haul rates.

Q. And under that arrangement you made an allowance to the Staley Company for performing this service in the plant, spotting service?

A. That is correct.

Q. Do you recall what that allowance was?

A. I think it was originally $1.63. Our records indicate that the allowance was originally $1.65 per car, per loaded car, and later increased to a maximum of $1.83 per loaded car, effective April 10, 1935. As I recall the arrangement, the arrangement provided for the actual cost of service observing the figures named as a maximum.

Q. Have you any figures as to what that cost the Baltimore & Ohio, on an average, for the period immediately preceding June 25, 1936, when that arrangement was discontinued?

A. Well, we will take the one year period starting with July, 1935, or a twelve-month period, and the average cost per car to the Baltimore & Ohio figured 1.64 7/100ths, or, in other words, about $1.65 per car on the average for the year period.

Q. Now, subsequent to June 25, 1936, what arrangement was made, so far as the Baltimore & Ohio is concerned, for the spotting and picking up of cars in the Staley plant?

A. Well, the Baltimore & Ohio was one of the five roads, parties to the so-called pool car arrangement, whereby the
627 Wabash were designated as our agent to perform the pool—to perform our switching within the plant.

Q. And how long did that continue, from June 25, 1936, to when?

A. Well, that continued until December the 9th, 1937.

Q. Now, for that period, June 25, 1936, to December 9, 1937, when the pool car arrangement went into effect, did you have prepared under your direction any figures as to the cost of that service to the Baltimore & Ohio Railroad Company, and if so, what was it?

A. Well, I have separated the—I have divided the total period named. I will take for a year starting with July, 1936, and ending with June 1937, and the average cost figured 2.95$\frac{7}{100}$ths per car, or, in other words, approximately $2.95 per car. Now, for the period July, 1937, to December 9, 1937, when the arrangement was terminated so far as the Wabash handling for our account, our cars within the plant, why, the average cost was $2.41 per car. Naturally the cost per car was reduced by reason of a pick up in business, and by that I mean the greater number of cars handled within the plant, and our proportion of the number of cars handled for our account, for the Baltimore & Ohio, bore to the total, reduced the average cost per car. I think, if I were to take a later period—or I will put it another way. I would say the same arrangement during 1938, whereby the Wabash handled for our account the cars within the plant, the cost would have been
628 considerably less than $2.41 per car.

Q. Now, subsequent to December 9, 1937, with respect to Baltimore & Ohio business in- and out-bound at the Staley plant, how has it been handled?

A. Well, subsequent to December 9, or effective with December 10, 1937, why, we have interchanged all of our cars through the recognized interchange with the Wabash at Decatur, under reciprocal switching, whereby we absorbed the reciprocal charges of the Wabash, on interstate traffic, fourteen cents per ton, minimum $2.97 per car, maximum $5.45 per car.

Q. Now, for the period from December 10, 1937, to and inclusive of March 1940, just how many carloads has the Baltimore & Ohio delivered to the Wabash and received from the Wabash going to or coming from the Staley Company, under this reciprocal switching arrangement?

A. Well, during the period December 10, 1937, to March 31, 1940, inclusive, the Baltimore & Ohio delivered to the Wabash 4,972 cars and received from the Wabash 12,092 cars, or a total of 17,064.

Mr. STRASSER. Pardon me, may I inquire? Is that all Staley business?

The WITNESS. Oh, yes.

Mr. GOEBEL. Yes; that was in my question. I said going in or from the Staley plant, I think.

The WITNESS. I think we should keep in mind that I am
629 covering 1928 in the period.

Mr. GOEBEL. I said December 10, 1937 to March 31, 1940.

The WITNESS. I don't want you to become startled by the volume of business being handled by the Baltimore & Ohio Railroad.

Mr. STRASSER. That is what I had in mind.

By Mr. GOEBEL:

Q. Now, for that period, December 10, 1937 to March 31, 1940, on the number of carloads which you have given, how much in dollars and cents did the Baltimore & Ohio pay the Wabash for reciprocal switching?

A. Well, in sequence or on the cars delivered, we paid the Wabash $25,660.58, and on the cars received from the Wabash $43,362.48, or a grand total of $69,023.06.

Q. Now, Mr. Daggett, have you made any calculations for the purpose of determining how much the same amount of business would have cost the Baltimore & Ohio Railroad during that period if the business had been handled under the pool power arrangement, and if so, what is the result of that study?

A. Well, had the service during the period that I have covered been performed by the pool power arrangement on an average cost of $2.41 per loaded car, which was the figure I used for the—from July 1937, until December 9, 1937, we would have paid to the Wabash $41,124.24, which would have represented a saving to the Baltimore & Ohio of $27,898.82. Otherwise stated, it cost us $27,898.82 more than under the arrangement—it cost
630 us that much more under the present arrangement, or approximately $1,000.00 per month, than if the pool power engine had done the work for us.

By Com. PATTERSON:

Q. You are contributing $1,000.00 a month to this arrangement?

A. I figure that we are contributing more than $1,000.00 a month to it, because I haven't taken into consideration the increased business during the year 1938, which was considerably heavier than during the year 1937.

Q. Would you like to make your own deliveries?

A. Yes, sir.

Q. Why don't you do it?

A. Why we are perfectly willing and hopeful to do it.

Q. Is there anything to stop you from doing it now?

A. Well, the fact of the matter is that all of out-bound cars come to us in reciprocal switching through the Wabash and our in-bound cars we return in the same manner, because that is the way the consignees want the business to be handled.

Q. That is, the convenience of the Staley Company, they want it that way?

A. Well, I don't know, but in response to your question as to the Baltimore & Ohio serving the industry, I want to emphasize the fact that for a long period of years we served the industry and we want to continue to serve the industry, whether that be with our own power or through some arrangement that
631 we can work out with the other four roads, such as the arrangement previously in effect whereby the Wabash performed the service for us, and, to all intents and purposes, the Wabash, in performing that service, was just the same as if that engine was lettered Baltimore & Ohio; it was a B. & O. engine.

Q. Is it your thought that you could still do it with your own power at a saving of $1,000.00 a month to the Baltimore & Ohio?

A. Well, now, when I talk about our own power, that also—that takes into consideration the qualification I made. If we elect to pay someone else to do that work for us and that someone else is the Wabash, I consider that my own power.

Q. Well, I don't see how you can be losing $1,000.00 a month if the Wabash is doing that as efficiently and economically as you could do it yourself?

A. We are losing the $1,000.00 or more a month by reason of the fact that under the present arrangement we are compelled to allow the Wabash the recognized reciprocal switching rate of fourteen cents a ton, maximum $5.45 per car.

Q. Where does that compulsion come from?

A. By reason of our method of interchange, or interchange with the Wabash.

Q. Then you are a party to this arrangement of your own free will, you are not insisting on making your own deliveries there. I mean, Staley is not preventing you from doing it, so that we——

A. I don't know about that.

632 Q. Well, I would like to know.

Mr. BURCHMORE. Well, we are going to tell you about it, Mr. Commissioner. It is a long and rather horrid story, I think.

The WITNESS. It is long and rather involved.

Com. PATTERSON. I thought perhaps you knew.

By Mr. GOEBEL:

Q. Now, Mr. Daggett, there has been considerable testimony in the case by witnesses for the other railroads as to the advisability or the propriety of the assessment of a spotting charge such as now exists under Sperry tariff 79 at the Staley plant. Do you have any statement that you may want to add to what they have said or do you want to express to what extent, if any, you concur in such statements as those witnesses may have made?

A. Well, I want to avoid repetition, of course, for the benefit of the record. I can subscribe to that part of the testimony put in by

the Illinois Central witnesses, Mr. Miles and Mr. Sheppard; or, in other words, to make myself clear and in harmony with my testimony in 1931 or 1932, as I recall, in the east, why, our line haul charges included the spotting or delivery on in-bound loads within the plant.

By Com. PATTERSON.:

Q. Just how much is that, $2.41 or $5.45?

By Mr. BURCHMORE:

Q. You mean work performed by your own engines, don't you?

Com. PATTERSON. Well, no; his line haul rates include
633 some compensation for terminal service. What is that compensation that his line haul rates include, $2.41 or $5.45?

The WITNESS. Well, our line haul rates, if handled through the medium of the Wabash, which is, of course, not pleasing to me or to the management of the Baltimore & Ohio, would include the absorption of the figure you name.

By Com. PATTERSON:

Q. $5.45? It was that much?

A. Yes; a maximum of fourteen cents a ton, with a maximum of $5.45 and a minimum of $2.97. Our line haul charges would include that absorption, but it is my contention and my hope that by serving the plant direct, why, I would apply my line haul charges to the various points of delivery within the confines of the plant on in-bound business, and I would apply my line haul rate on the out-bound from the point of loading within the confines of the plant to the ultimate delivery, and by so doing I would save this $1,000.00 or more per month which I am paying over to the Wabash Railroad under reciprocal switching.

Q. And you would also save Staley $2.50 a car. It seems to me you ought to make a deal there some way.

A. Well——

Mr. BURCHMORE. Maybe we are all handcuffed.

Mr. LE FORGEE. Wait a minute. I want him to answer the Commissioner's question.

The WITNESS. I don't know whether it would be saving them $2.50 a car or not, because under—in line with my testi-
634 mony which I have just given, why, I don't agree that that charge should be imposed against us.

Com. PATTERSON. No; but they are paying the Wabash $2.50 a car and you are paying the Wabash a maximum of $5.45 a car. Now, you would save the difference between $5.45 a car and approximately $1.64, or $2.41.

The WITNESS. $2.41.

Com. PATTERSON. And you would save the Staley Company $2.50 a car. It seems that is quite a substantial saving per carload.

The WITNESS. I don't know. You are talking about savings and maybe I am regarding it as a penalty instead of a savings.

Com. PATTERSON. Well, regardless of whether it is a penalty or what it is, it would be a saving to the Staley Company of that much a car.

Mr. LE FORGEE. A cancellation of that sum paid by the Staley Company.

Com. PATTERSON. That is right. Well, I will put it another way.

Mr. LE FORGEE. No; I want it that way.

Com. PATTERSON. I would like to have the question answered also.

The WITNESS. Will you repeat the question, please?

(Question read.)

635 The WITNESS. Certainly it would be a saving to the Staley Company under the imposition of the present spotting charges. I don't know whether I have finished my statement or not. I will have to take it up from—at that point where the Commissioner made the inquiry. I am perfectly willing to let it stand with this addition, and I do want to again emphasize that it is costing the Baltimore & Ohio a lot of money under this present arrangement whereby we interchange our cars through the Wabash, and I made the statement that as compared with the privilege of serving the plant direct under the pool power arrangement, that it was costing us over $1,000.00 a month. I would like to compare the cost under the old arrangement during the time when we paid the industry a charge for doing the work for the Baltimore & Ohio, using $1.65 and the same number of cars which I have previously mentioned, in and out-bound, 17,054. Had the work been performed for our account at an average cost of $1.65 per car, it would have cost us $28,155.60, which would have represented a saving to the Baltimore & Ohio under we actually paid of $40,867.46; or, stated otherwise, it cost us $40,867.46 more under the present arrangement, or about $1,500.00 per month.

Com. PATTERSON. It is getting worse.

The WITNESS. Yes.

By Mr. GOEBEL:

Q. Well, let us be fair about that figure now, Mr. Daggett. If Staley was doing the work at the present time, they prob-
636 ably would not be doing it for $1.65, would they; they would be charging more than that?

A. That is correct, but he was——

Exam. WEAVER. Wasn't the last figure $1.83 anyway?

The WITNESS. Yes; that was a maximum, $1.83.

Mr. BURCHMORE. Actual cost, but not to exceed $1.83 any month. If it fell less we would get less, any month it was higher we would not get more.

Com. PATTERSON. You were a little better to the men the month it was less.

The WITNESS. I will take the month of June 1936, which was the last month, and it cost us exactly $1.83 that month.

By Exam. WEAVER:

Q. In your contentions about line haul rates including connecting line switching charges, do you make any distinction between commission prescribed rates and carrier made rates?

A. No.

Q. You contend, then, that all the grain rates prescribed by the Commission include connecting line switching charges?

A. Unless there is some restriction in the terminal tariff at the city.

Q. Well, that couldn't have anything to do with the Commission made rate, you know. If the Commission prescribed rates to include connecting line switching charges, you couldn't change it by the carrier?

A. That is correct.

637 Mr. BURCHMORE. Well, the Commission prescribed rates were prescribed for application over the shortest routes by which traffic could move without transfer of lading, and were applicable by all routes which handled the business.

By Exam. WEAVER:

Q. There couldn't be any distinction in the absorption under Commission prescribed grain rates at Decatur, say, and at Minneapolis, could there?

A. Not that I know of.

Q. No; if they were included at one point they would have to be included at others, isn't that right?

A. Let's understand the question. Will you repeat it, please.

(Question read.)

By Exam. WEAVER:

Q. The Commission made grain rates, in other words——

A. Yes, 17,000, part 8, for instance.

Q. Yes.

A. All right.

Q. If those rates include connecting line switching charges at Decatur, must they not include them at all other points, including, say, Minneapolis?

A. Why, I should say so.

By Mr. LE FORGEE:

Q. Mr. Daggett, I want a little information. I don't know whether I understood you correctly. If some situation be created by which the Baltimore & Ohio would have direct connection into the yards of the Staley Manufacturing Company,
638 would that produce a situation as a result of which you would favor the cancellation of the $2.50 charge?

A. Why, I am not selfish to the extent of——

Q. But I am asking——

A. Will you read the question, please.

(Question read.)

A. I have already—my testimony indicates that I favor the cancellation of the $2.50 charge, and I also want to say that we have a direct entrance into the Staley plant that is not being used.

Q. And that you favor the cancellation of the $2.50 charge?

A. Yes, sir.

Mr. LE FORGEE. All right.

By Mr. STRASSER:

Q. Mr. Daggett, does your company publish a reciprocal switching charge at Decatur?

A. Yes, sir.

Q. What is it?

A. The same charge as I have named published by the Wabash, fourteen cents per ton, minimum $2.97 per car, maximum $5.45 per car.

Q. So that on every car interchanged between the Wabash and the Baltimore & Ohio, originating at or destined to industries or plants served by the Baltimore & Ohio, the Wabash would have to pay that reciprocal charge, wouldn't it?

A. That is correct.

639 Q. Out of its line haul rates. Now, then, if the Wabash—if you had been fortunate enough to have a plant and you had received on interchange from the Wabash or interchange to the Wabash a total of 17,064 cars during the period you have used in your calculations, why, the Wabash would have paid you a large sum of money?

A. That is precisely the point. We have no industry on the Baltimore & Ohio—no industry located locally on the Baltimore & Ohio at Decatur that ships anything in the volume mentioned.

Q. I don't see what this reciprocal switching charge has to do with this case and I just wanted to find out——

A. Perhaps I interjected it because—to the extent that I am selfish, that I desire to save for our company all the money I can, and when we have a perfect entrance into the plant and can save so much money for the company I represent, naturally I want to use

that entrance into the plant, and that is the only reason why I interjected the question. It really has no bearing on the determination of the issue, as I see it, before the Commission.

Q. Now, just one more question. Your calculation here of your savings assumes, does it not, that the cost to the Baltimore & Ohio of placing the cars at the point of interchange between the Wabash and the B. & O. is exactly the same as would be your cost if you delivered the cars to the—what used to be the interchange track with the Staley Company?

640 A. I am glad you mentioned that.

Q. Well, it is based on that assumption, isn't it? You haven't made any allowance for any difference.

A. Approximately there is no difference in the service performed by the B. & O. in placing the cars on the interchange track of the Wabash as compared with taking our cars and delivering them to the plant through the gates just east of Jasper Street. There is little or no difference in the service.

By Com. PATTERSON:

Q. That is, you can get into the plant about as handy as you can get to where you now interchange them with the Wabash?

A. That is the point I was trying to bring out.

Q. Right at this point, as a result of this charge did it improve your business or did you lose a little business on account of it?

A. Well, it is pretty hard to say. I sort of feel pretty much about it as expressed by Mr. Sheppard, of the Illinois Central, yesterday. I like the idea of serving the plant, especially a plant——

Q. Taking care of your own business?

A. Especially a plant that has been on our railroad for better than twenty-six years, and there are certain advantages in serving a plant which I may briefly illustrate by saying if a man in Baltimore, Baltimore, Maryland, buys a car of feed or produce

641 from the Staley Company, and he looks up the switching tariff on the list of industries at Decatur, Staley Company served by the Wabash. I don't see the B. & O. there at all. All right, I will just give the Wabash a haul on that car, say, to Defiance, Ohio, and thence the B. & O. from Defiance; whereas, if the Staley Company indicated that tariff as being located on the Baltimore & Ohio and the man at Baltimore wants the Baltimore & Ohio, why the man at Baltimore hauls it on the Baltimore & Ohio. There is a certain psychology which I think is involved.

Q. You think it would result in some loss of business to you?

A. Well, it is pretty hard to say. Of course, there has been an increase in business in the last couple of years and the industry

has treated us very well. I can't say that I am completely satisfied. I would not be ambitious if I were to use that expression and say I am satisfied with what I am handling.

By Mr. STRASSER:

Q. Well, Mr. Daggett, you haven't any complaint to make about the service you got from the Wabash in getting cars to you promptly that are routed over your line?

A. No.

Com. PATTERSON. He is complaining about what you charged him.

Mr. STRASSER. Well, off the record here..

(There was a discussion outside the record.)

Com. PATTERSON. All right, go ahead.

642 By Mr. GOEBEL:

Q. Does the Baltimore & Ohio serve the Mississippi Valley Steel Company, Mr. Daggett?

A. Yes, sir; we have our own entrance to the Mississippi Valley Steel Company and we serve the industry with our own power.

Q. And that is the plant adjacent to the Staley plant that was formerly served by the Staley engine when you had the terminal allowance?

A. That is correct.

Q. And do you handle cars to and from the Mississippi Valley for any other lines under reciprocal switching?

A. Yes; the other four Decatur lines have the benefit of the reciprocal switching charge to and from the Mississippi Valley Steel. My only object in mentioning the Mississippi Valley Steel Company was the fact that it was connected up with the A. E. Staley Manufacturing Company in the 55th Supplemental Order of the Commission's decision, and I wanted to clarify that part dealing with the Mississippi Valley Steel Company and to point out to the Commission that we have our own separate entrance serving the steel company.

By Com. PATTERSON:

Q. You built a connection in there, was that it?

A. Oh, we have had that connection for so many years——

Q. Well, you are using it now, then?

A. Oh, yes, sir.

Mr. GOEBEL. That is all the questions I have.

643 Com. PATTERSON. Cross-examine.

Mr. LOVERING. Just one question.

Cross-examination by Mr. LOVERING:

Q. Did you give a figure showing the cost today in handling a car of loaded freight in and out of the Staley plant?

A. Yes, sir; the cost today approximates—pardon me, I did not give that figure.

Q. I didn't recall it but I wasn't sure, and I thought I would make sure.

A. Well, I had intended and I would like to put it into the record now. During the twenty-eight-month period, December 1937, to March 1940, inclusive, when we handled 4,972 cars for delivery to the Wabash, the average cost per car was $5.16 and it represented an average of 36.857 tons per car.

By Mr. GOEBEL:

Q. That is the in-bound?

A. That is the in-bound. I want to cover the out-bound or receipts from the Wabash during the same period, amounting to 12,092 cars, averaging 25.57 tons per car, and our payments to the Wabash average per car $3.58.

By Mr. LOVERING:

Q. Those figures cover about a twenty-eight-month period?

A. Yes, sir.

Q. As I understand it, those four thousand some odd cars in, and twelve thousand and some odd cars out are loaded cars?

644 A. Yes, sir.

Mr. LOVERING. That will be all.

Com. PATTERSON. Any other cross-examination? (No response.) If there is nothing more, we will take a recess until 9:00 o'clock tomorrow morning in this room.

(At 5:15 o'clock P. M., on Wednesday, April 24, 1940, an adjournment was taken to Thursday, April 25, 1940, at 9:00 o'clock A. M.)

645–646 ORLANDO HOTEL, *Decatur, Illinois,*
Thursday, April 25, 1940.

Met, pursuant to adjournment, at 9:00 o'clock A. M.

Before W. J. PATTERSON, Commissioner; F. M. WEAVER, Examiner.

Appearances: As heretofore noted.

PROCEEDINGS

T. C. BURWELL was sworn and testified as follows:

DIRECT EXAMINATION

Mr. BURCHMORE. Mr. Commissioner, in calling Mr. Burwell as a witness, I want to point out that at the hearing before Examiner King in Chicago, on June 27, 1938, the A. E. Staley Manufactur-

ing Company offered evidence so far as it was permitted to offer evidence under the restricted scope of that hearing, and Mr. Burwell testified, and, so far as the reopened Ex Parte 104, Part 2, proceedings is concerned, we would have no further evidence to present at this time, that is, no substantial further evidence. There have been one or two slight changes in physical facts to which we will bring attention. We have here, however,
647 the I & S case involving a suspension of tariffs, which were suspended, as we are informed and believe, on no protest whatever from anyone, and I have made a diligent examination of the Commission's file and inquiry, but entirely upon the Commission's own motion and at the suggestion of its own staff.

Now, we want to offer testimony in support of our proposition that these tariffs, these supplements cancelling the $2.50 charge, should be allowed to take effect, and the charge should be cancelled, and, if we can decide that, I will then have to make some statement with regard to what other evidence might be appropriate from us at this time. Now, I want to avoid controversy and avoid repetition, and if—I am conscious that your Honor was not present at these sessions—if it is agreeable to you, I would like very briefly to mention some things that Mr. Burwell has testified concerning at the previous sessions, so that he may orient himself here.

Com. PATTERSON. If there is no objection, that is all right.

By Mr. BURCHMORE:

Q. Mr. Burwell, what is your connection with the A. E. Staley Manufacturing Company?

A. I am a member of the board of directors, a member of the executive committee, a vice president and traffic manager.

Q. And in your duties as vice president and traffic manager, do you have general charge and supervision over matters of railroad transportation and the rates that you pay and
648 the services you receive and require from the raliroads?

A. Jurisdiction over all such matters.

Q. Subject, of course, to your report to the chief executive officer and to the board, would yours be the judgment—are you the official who would exercise the judgment as to what should be satisfactory and necessary for the Staley Company in the way of transportation services and rates, and so forth?

A. I am; yes, sir.

Q. Now, on June 27, 1938, you covered in your testimony, as you may recall, changes that had occurred in the service and in the physical features of the plant, and so forth, subsequent to the hearing of 1932?

A. I testified; yes, sir.

Com. PATTERSON. Right at this point, I would like to ask if there has been any changes in the operation or services of the plant so far as the switching is concerned since June 27, 1938, the time of your testimony in Chicago.

Mr. BURCHMORE. That is just what I am going into.

Mr. LE FORGEE. We are going into the question of changes.

By Mr. BURCHMORE:

Q. At that time, June 27, 1938, you testified that the Wabash Railway brought all cars to and took all cars from the plant?

A. That is right.

Q. And is that still the condition?

A. That is true.

649 Q. Well, now, have you since that time made any change as regards the waybills and the billing of cars moving to the plant or from the track in the plant?

A. We have; yes, sir.

Q. And what is that change?

A. I will speak first as to in-bound loads other than grain and coal. Staley Form No. 61–R. B. is a purchase requisition. A foreman who orders what we term miscellaneous manufacturing supplies must execute such a requisition to the purchasing department and the requisition is required to show the building at which the commodity is to be used. In speaking of miscellaneous manufacturing supplies, that is a term which is used for other than corn, beans, and coal, which are the principal in-bound commodities. Then the purchasing department executes its purchase order and requests the seller to mark on the bill of lading the building at which the car is to be delivered. I have here the originals of two such bills of lading.

Q. Well, to be brief about it, does your company have the routine practice as regards all purchases excepting corn, beans, and coal, of requesting and requiring the vendors, when they take out railroad bills of lading, to specify in the bills of lading not only the Staley Company, consignee at Decatur, but the number of the building to which a lot of goods is consigned?

A. Absolutely.

Q. What is the result of that as regards the railroad handling of the car?

650 A. The result is that it enables the railroad to immediately place the car on arrival at Decatur, or to give—if it comes in on other than the Wabash, to notify the Wabash, for example, as to where the car is to go, what building within the plant.

Q. Well, if the notations on the bills of lading are carried on to the waybills, as they would be in ordinary railroad practice, is it

the result that when the car arrives at Decatur, over whatever railroad it comes in, the railroad at the time of the arrival knows from the waybill what part of the plant this car is to go to?

A. Absolutely; and on 100 percent of the cars.

Q. As to coal, does all coal go to one location in the plant?

A. Coal is unloaded at two points in the plant.

Q. Are they at one section of the plant?

A. In the same general vicinity.

Q. Would there be any point of such instructions as regards the coal shipments?

A. No, sir; and the further reason, of course, that coal is all intrastate traffic.

Q. And does the grain move to the elevators by way of inspection tracks, so would any instructions be of practical advantage as regards the grain?

A. It would be impractical to issue such instructions on corn or soya beans or any other grain for the reason that all of such grain is inspected and we do not determine until
651 subsequent to the inspection at which one of the three elevators that such grain is to be unloaded.

Q. Well, now, that is one change that has occurred. Was that change dictated or designed for your own peculiar benefit and advantage?

A. No, sir.

Q. What was the purpose of it?

A. To assist the railroads.

Q. At the time of the hearing in June 1938, you said that certain tracks were spiked and certain tracks were out of commission?

A. That is right.

Q. Does that remain substantially the present situation as regards the tracks?

A. The situation is identical to what it was at that time, yes, sir.

Q. You said then that the locomotives which in times past the Staley Company had used in its plant, both in intra-plant switching and in performing service for the carriers under the allowance, that these locomotives were laid up in white lead; is that still their state?

A. We have definitely disposed of the locomotives by sale. We own no locomotives at the present time.

Q. Were they sold to one of the local railroads?

A. No, sir; they were sold to a concern in Atlanta, Georgia.

652 Q. Now, you gave at the previous hearing the number of cars that had been moved in and out during the repre-

sentative year, and certain information as to where they moved, that is, the portions of the plant to or from which they moved. Will you state during the year 1939 what was the total number of in-bound cars unloaded at your plant, of corn ond soya beans, giving the total for each railroad?

A. During the year 1939, the Baltimore and Ohio handled into Decatur for our account 2,066 cars of grain; the Illinois Central, 5,431 cars; the Illinois Terminal, 824 cars; the Pennsylvania Railroad, 1,029 cars; the Wabash Railway, 4,429 cars, or a total 13,779 cars.

Q. Now, for trade and competitive reasons, would you prefer not to separate the number of cars of corn from the number of cars of soya beans?

A. Well, in looking around over the audience I see processors of corn and processors of soya beans, and I would much prefer to group them.

Q. And therefore you have shown the combined figure for all grain?

A. That is right.

Q. During that year 1939, how many carloads of products did you ship out of the plant by each of the five roads?

A. During the year 1939 we shipped out by the various railroads as follows: Baltimore and Ohio, 5,440 cars; Illinois Central, 4,819 cars; Illinois Terminal, 1,202 cars; Pennsylvania,
653 2,026 cars; Wabash, 8,829 cars, or a grand total of 22,316 cars.

By Com. PATTERSON:

Q. Have you these same figures for a period, say, 1935, before the change in this arrangement was cancelled?

A. I do not have the figures now. I could supply the figures.

Q. You could supply the figures for the record?

Mr. BURCHMORE. I don't know whether we can give them correspondingly broken down.

Com. PATTERSON. Well, that is what I would like to have, them correspondingly broken down, so far as grain movement in-bound is concerned, including soya beans.

Mr. BURCHMORE. We will, unless we run into——

Com. PATTERSON. Unless you find you can't.

Mr. BURCHMORE. Unless we find it would involve undue expense, in which case we will notify you.

Mr. LE FORGEE. If it is possible to supply those conveniently we will be glad to.

Com. PATTERSON. O. K.

By Mr. BURCHMORE:

Q. Now, you gave some figures at the previous hearing as to the cars that originated at or moved to various loading and unloading locations in the plant. Have you made a study of the movements for a recent representative period?

A. I made a study for the week immediately preceding the hearing.

Q. That is the week of April——

654 A. 15th.

Q. 15th to 20th, 1940?

A. That is correct.

Q. Now, during that week was the movement of grain into the plant of normal volume, considering the year as a whole?

A. The movement of corn was somewhat normal, the movement of soya beans was somewhat less than normal by reason of the fact that soya beans move direct from combines and the movement of soya beans is usually in September, October, and November.

Mr. LE FORGEE. Seasonal.

The WITNESS. Seasonal.

By Mr. BURCHMORE:

Q. During the week of April 15th to 20th, what was the total number of cars of grain and of corn and beans unloaded at the plant?

A. During the week of April 15th to 20th, inclusive, we unloaded a total of 94 cars.

Q. Multiplying that by 52 weeks in the year would give a very much lesser estimated yearly movement than the figure you gave for 1939?

A. That is correct, by reason of the fact that the heavy movement of beans is during the bean moving season.

Q. How many of those 94 cars moved to Elevator "A"?

A. 49.

Q. And Elevator "B"?

A. 44.

Q. And Elevator "C"?

655 A. One.

Q. Now, during that week, how many carloads of miscellaneous freight moved to the plant and were unloaded?

A. 107.

Q. And of those 107 cars of miscellaneous freight, how many were in interstate commerce?

A. 24.

Q. Now, taking the 107 and without endeavoring to separate them between state and interstate business, can you say how many of those cars moved to each of the different building locations?

A. Yes, sir.

Q. Just the number.

A. To the coal docks, that is, for immediate consumption in the boiler house, there were 74 carloads of coal.

Q. And that is location No. 1?

A. You can call it No. 1. We usually call it the coal docks.

Q. Give the other locations and the number of each.

A. There were two cars unloaded at Building 10; there were four cars unloaded at Building 16; there were fifteen cars unloaded at Building 17; there was one car unloaded at Building 19; there were four cars unloaded at Building 20; there were three cars unloaded at Building 29; there were two cars unloaded at Building 39; one car at Building 48 and one car at Building 54.

Q. Now, these figures that you have given relate to in-bound movements?

656 A. Relate to inbound movements, yes, sir.

Q. During that week, what was the total number of outbound shipments, carload shipments?

A. 452 cars.

Q. Now, of that number, how many were moved from loading location No. 48?

A. I have that on the daily basis only. I can tell you each day.

Q. Read it off by day.

A. On April 15th, there were 57 cars from Building 48, one car from Building 33——

Q. No, go right down the line with 48, please—with Building 48.

A. All right, on the 15th we loaded 57 cars at Building 48, on the 16th, 24 cars at Building 48, on the 17th, 18 cars at Building 48, on the 18th, 22 cars at Building 48, on the 19th, 25 cars at Building 48, and on the 20th, 22 cars at Building 48.

Q. I believe that foots 168 cars?

A. I will take your word for it.

Q. We can verify that afterwards. Now, in Building 33, location 33, how many cars during the entire week?

A. Building 33, Mr. Burchmore, is the warehouse. It is a building from which we very seldom load. During that week we did load two cars at Building 33.

Q. One on the 15th and one on the 20th?

A. That is right.

657 Q. Now, Building 29, and what is that building?

A. Building 29 is the oil refinery. At Building 29 we loaded 10 cars on the 15th, we loaded 6 cars on the 16th, we loaded 2 cars on the 17th, we loaded 7 cars on the 18th, we loaded 1 car on the 19th, and we loaded 7 cars on the 20th.

Q. Which, I believe, makes 33. Building 12?

A. Building No. 12, that is the gluten feed elevator. On the 15th we loaded 8 cars; on the 16th, 13 cars; on the 17th, 18 cars; on the 18th, 12 cars; on the 19th, 16 cars; and on the 20th, 20 cars.

Q. I believe that makes 74; and at Building No. 20?

A. Building No. 20 is the building at which we load all of our outbound shipments of starch, and on the 15th we loaded 18 cars; on the 16th, we loaded 14 cars; on the 17th, 14 cars; on the 18th, 16 cars; on the 19th, 7 cars; and on the 20th, 17 cars.

Q. I believe that makes 86. Now, besides those, did you have one car from Elevator "C" during the week? Do you have track 17 or Building 17?

A. Building 17 is what we call the refinery building. That is the point at which we load all our shipments of corn syrup, unmixed glucose, corn sugar, and table syrup, and on the 15th we loaded 9 cars at Building 17; on the 16, 7 cars at Building 17; on the 17th, we loaded 26 cars; on the 18th, we loaded 13 cars; on the 19th, 16 cars; and on the 20th, 3 cars.

Q. I believe that makes 74. Now, during the week did
658 you load one car at Elevator "C"?

A. On the 18th we loaded one car of merchandise, grain, from Elevator "C," which is our merchandise account.

Q. And during the week did you have one car of cinders?

A. On the 16th there was a carload of cinders that was billed to the Division Superintendent of the Wabash Railway for ballast.

Q. Now, this seems to indicate that you had—these figures that you have given—that you had loaded principally from locations 48, 29, 12, 17, and 20?

A. Those five points are normally the loading points for the great preponderance of our outbound shipments.

Q. And your unloading was principally at Elevators "A," "B," and "C," and the coal docks?

A. That is the principal unloading points, yes, sir.

Q. And you did have some unloading at buildings or locations 17, 20, 29, and 48, from which there were inbound as well as the outbound?

A. That is correct.

Mr. BURCHMORE. It seems to me this is about ten principal loading and unloading locations, Mr. Commissioner, but you can draw your own deductions.

The WITNESS. There are really nine principal loading and unloading points. Now, there might be some occasional others, but nine principal ones.

By. Mr. BURCHMORE:

Q. And was the coal all in intrastate traffic?

659 A. Yes, sir; we do not buy any coal from interstate origins unless there might be strike conditions, and so forth, compelling us to go outside the state.

Q. Is it your business and concern in your daily routine duties to keep yourself informed and exercise jurisdiction as regards the needs of this company for transportation service?

A. Yes, sir.

Q. Do you know what your requirements are?

A. Yes, sir.

Q. With regard to terminal service as well as with regard to through service?

A. Yes, sir.

Q. Ar you familiar, day by day, and as a part of your regular duties, with the demands that you make on the carriers for service?

A. Yes, sir:

Q. And are you familiar with the way the plant is conducted and what takes place within the plant so far as the plant end of it is concerned?

A. Yes, sir.

Q. Well, now, do you exercise any supervision or take any part in the management or the conduct of the switching operations in and about your plant as performed by the Wabash Railway?

A. I do not and neither does anyone else employed by the Staley Company.

660 Q. Well, do you have knowledge, yourself, of how the Wabash does the work in any detailed way?

A. I do not.

Q. If there is a car that is delayed or a crew that does not work every minute or cars are handled inefficiently for any reason, would you know about that or have anything to do with it?

A. No, sir.

Q. Well, what has been your attitude and effort as regards the work of the Wabash Railway in and about the plant in the switching and movement of cars?

A. We have left that up entirely to the superintendent and to the yardmaster, who has immediate jurisdiction, except that we are willing and anxious to cooperate at all times with them and work out anything they may suggest that would simplify the operation for them.

Q. From your point of view, has the operations as regards the bringing of cars to and taking cars from the plant, and in the placement and points of loading and unloading—I am speaking now of service, not of costs—been satisfactory to your company?

A. Absolutely.

Q. Has there, at any time since 1930, since the Wabash began doing the work, been any interruption or interference by the plant with the switching operations done by the Wabash in these particular respects that I asked you about? Have you demanded
661 service in excess or normal operations?

A. We have not.

Com. PATTERSON. You are speaking with respect to operations of your plant rather than——

Mr. BURCHMORE. No; railroad operations.

Com. PATTERSON. Well, I thought he had nothing whatever to do with the railroad.

Mr. BURCHMORE. He hasn't demanded them, I say—well, perhaps I don't understand.

The WITNESS. Mr. Burchmore asked me if we had demanded other than—unusual service. I said we had not.

By Mr. BURCHMORE:

Q. Other than usual service.

A. Normal service.

By Com. PATTERSON:

Q. That is, you understand what normal service should be?

A. Yes, sir; I have got a pretty good idea.

Com. PATTERSON. Well, it is your idea, anyway.

By Mr. BURCHMORE:

Q. Well, let's be candid, Mr. Burwell, all of us with everybody else. Do you thing the railroads today want it to be known that they do believe in pretty good service?

A. They all come around telling me that they are rendering excellent service. I suppose they are.

Q. Just for you or for everybody?

A. They are doing it for everybody. I was very much
662 amazed to find what they were doing from the Pacific Coast to New York.

Q. You don't ship from the Pacific Coast to New York?

A. No; but they were bragging about it.

Q. Please state whether or not you receive advice from customers or from Western salesmen or Eastern salesmen, and so forth, of the quality of service, railroad service, that is given competitors' traffic to markets?

A. Oh, yes, sir. Not so long ago I had a letter referred to me from our sales department, wherein our Boston management said if our transportation service isn't better we are going to lose all of this business to one of our competitors.

Q. Well, you believe in good railroad service?

A. That is right.

Q. Not poor, slow, or delayed?

A. I certainly believe in good railroad service.

Q. Do you have any operations in your plant in the manufacturing processes or transfer of goods around the plant, or anything of that kind, that creates obstructions to the work of the railroad engines or impedes or delays their work or holds them up?

A. We do not. We do not have any process that requires the transfer of a commodity from one building to another by transportation, and so forth, that would do that.

Q. Do you have locomotive train operation?

A. We have a locomotive that works in the coal storage yard.

663 Q. Does that delay or impede on transfers with the movement of coal or anything else?

A. It does not.

Q. Does it have its own track on which it runs?

A. It works on tracks in the coal storage yard; it is usually at the west end of those tracks, which are stubbed on that end.

Q. Do you have any maintenance or construction work in and about your plant which interferes with or in any way delays or impedes the economic switching operations?

A. We have construction work at times but it does not delay the normal switching operations.

Q. Do plant employees, either under your direction or not under your direction, give any instructions to the railroad crews at any time?

A. We have a volume of intraplant switching and on those cars the shipping department telephones the Wabash yard clerk and requests the movement, and confirms that telephone conversation by a switching order which is issued in triplicate, the original goes from the Wabash yard clerk to the engine foreman, the shipping department retains the triplicate and the duplicate goes to the traffic department, which we use to check against the freight bill that is rendered by the agent.

Q. Well, is that the Wabash yard clerk you mentioned, is that a man that was designated by the Wabash as the man to whom you should make your orders for intraplant switching?

664. A. Yes, sir.

By Com. PATTERSON:

Q. Is he the man at the Wabash station or is he in your plant?

A. He is located in our scale house. We are nice enough to give him room in there so they did not have to build an office for him.

Q. Now, a man in your office that is on your staff telephones to this Wabash yard clerk and gives him orders for intraplant switching, is that right?

A. The shipping clerk or someone in the shipping office.

Q. Does your company have a yardmaster?

A. No, sir.

Q. Well, does anyone about your organization give any instructions to the switch crews?

By Com. PATTERSON:

Q. Have you ever had a yardmaster?

A. We had a day and night yardmaster when we operated our own switch engines; not subsequent to that.

Q. Since the 23rd of June 1936, you have had no yardmaster?

A. We have had no use for a yardmaster since we discontinued the operations of the Staley engines, which, I believe was June 26, 1936.

Mr. LE FORGEE. You don't quite answer the Commissioner's question. You don't have a yardmaster?

The WITNESS. We do not and have not had since that date.

By Mr. BURCHMORE:

Q. When you have a shipment?

665 By Com. PATTERSON:

Q. With respect to this yardmaster, has it been necessary at any time for the Wabash Railway to employ a yardmaster within your plant?

A. Yes, Mr. Commissioner; it has. They have employed a yardmaster or an assistant yardmaster, I think, for 30 days or some such period during the heavy bean season last year, and in my opinion they could cut off—do it a little more efficiently if they had daily supervision there instead of Mr. Curran coming in once a week or so, but that is their business.

By Mr. BURCHMORE:

Q. Is that any of your business?

A. No, sir.

Mr. LE FORGEE. Pardon me, just a minute. That soya-bean shipment in your plant is a seasonal proposition, isn't it?

The WITNESS. That is right.

Mr. LE FORGEE. And the sale of soya beans throughout Central Illinois where you buy your produce, is covered possibly from the 1st of October up to the middle of December?

The WITNESS. Well, the heaviest movement occurs in about a six-week period.

Mr. LE FORGEE. Yes.

By Mr. BURCHMORE:

Q. I think that prompts me to ask this: The Commission in Washington may not appreciate the importance of the soya-bean

traffic of Illinois and of the city of Decatur. Is the soya-bean industry a relatively new industry in this county? Of course, corn has been here since the Indians, but what about soya beans?

666 A. Why, the A. E. Staley Manufacturing Company began processing beans in 1922, which was the first industrial processing of soya beans in the United States. In 1939 the total beans harvested in the United States was 874,870,409 bushels.

Q. You are giving Government statistical figures?

A. Yes, sir. In 1939, Illinois produced of that total, 450,423,000, or approximately 52 percent of all beans produced in the United States.

Q. Now, then, is Decatur in the heart and center of the soya bean producing country?

A. It is; yes, sir.

Q. About what was the crush in Decatur in 1939?

A. The crush was about 32 percent of the total crushed. The crush this year will be considerably higher by reason of the fact that the Archer-Daniels-Midland plant did not go into operation until about January 1st of this year, on or about that date, and the further fact that Spencer Kellogg have increased their grinding capacity at Decatur.

Q. Well, now, at the height of the season, when soya beans are moving in the greatest volume would it be a very simple thing for the Wabash—would it be very easy for the Wabash terminals to become congested if soya beans were not handled quite expeditiously and unloaded promptly and not allowed to congest in the cars?

A. It would; yes, sir.

667 Q. And excepting for that necessity of prompt unloading and release of equipment of the traffic moving in very heavy volume, would there be any necessity for quick getting of the beans to the elevator for unloading?

A. No, sir.

Q. Well, now, in regard to your assistance or cooperation in the matter of receiving and unloading soya beans and other freight, does your plant employ the car pullers which you described previously as being in various locations in the plant?

A. It does; yes, sir. I testified about that in 1938.

Q. And with those car pullers you move those cars to the exact spot where they have to be unloaded?

A. That is right.

Q. And do you have mechanical devices of the most modern kind for unloading grain and soya beans from the cars?

A. We think they are; yes, sir.

By Com. PATTERSON:

Q. How many cars will one of these car pullers move.

A. Oh, I judge it would move probably 25, 30 cars.

Q. In all sorts of weather conditions?

A. Oh, it might move less if there was sleet on the rails, or something of that nature, it would not move as many as it would in the summer time.

Q. No; subzero weather?

A. Oh, in subzero weather I suppose—I don't know, to
668 tell you the truth, it is a supposition; I suppose they would move five or six cars at a time in subzero weather.

By Mr. BURCHMORE:

Q. How does that car puller actually operate? When a string of cars is put in at a grain elevator on one track, does the car puller pull them all or a bunch of them in one pull?

A. Oh, it usually goes down and gets a big hook on to the first car they want to pull down and pull that car. There is no necessity of the car puller pulling a string of cars. We only need one car at a time.

By Com. PATTERSON:

Q. Isn't it a fact that car puller will only reach about 12 cars? I looked at your car pullers yesterday and they will only reach about 12 cars.

A. I think at those four tracks—there are four tracks at Elevator "C" and they will hold 65 cars, those four car tracks to the west of Elevator "C". Now, we might, when we get down to the 12th car, want to bring those last three down if we had 15 on the track.

Q. But the remainder of the 65 would be out on a limb?

A. Oh, no; Mr. Commission, there are four tracks.

Q. Yes.

A. And 65 would be a little better than 15 on each track.

Q. Oh, if they divided them 15 on each track.

A. Well, the tracks won't hold but 15 or maybe 20. You can only spot 65 cars, so if you had 65 you would have to have
669 them on those four track.

Q. At that particular location?

A. Yes.

Q. But at the others——

A. That is the greatest capacity of any track where we have a car puller.

By Mr. BURCHMORE:

Q. Where the railroad places cars in at any of these locations where you have car pullers, please state whether or not, when the

engine has gone away and left the string of cars there, then all the cars that are so left are, as a matter of fact, handled by the car pullers to the unloading location?

A. Absolutely.

Q. They are?

A. Yes, sir.

Q. Then the engine does not have to come back and do some more spotting on those cars?

A. No, sir.

Q. Well, now, is that true, according to your own knowledge and information, at some plants of other companies and not true at others; some of them have car pullers and some don't. Is it a common thing and yet not a universal thing?

A. Well, I understand that some people do and some don't but——

Q. Did you file or cause to be filed and signed as an officer of the Staley Company a certain petition filed with the Inter-
670 state Commerce Commission in October 1937, seeking the suspension of the $2.27 rate at the time it was published by Agent Sperry for the account of the railoads?

A. I did; yes, sir.

Q. And have you been over that petition recently?

A. I have; yes, sir.

Q. Did that petition set forth the various grounds on which the Staley Company then considered the $2.27 rate to be an unreasonable and unjust and a prejudicial rate?

A. They did; yes, sir.

Q. And did you set forth in that petition the facts which seemed to you to lead to those conclusions?

A. Yes, sir.

Q. Well, now, do you today—and has that charge become $2?

A. Became $2.50 under the Ex Parte 123 proceedings.

By Com. PATTERSON:

Q. I don't want to go into that phase of it at this time, but, as I understand it, these cars load 50 tons or more, the average 50—more than 50 tons per carload; is that right?

A. The out-bound loads?

Q. No; the in-bound loads; the soya beans?

A. Oh, the grain or soya beans, Mr. Commissioner, are usually billed at 110 percent of the marked capacity of the car. Now, I have been station agent at a great many stations, and if you are loading an 80, normally you bill that car at 88,000, 100 at
671 110. Now, that is the basis. Of course, a 60,000 capacity car, it is billed as 66,000.

Q. But the yardmaster testified yesterday, as I remember it, that the average loading of these cars was more than 100,000 pounds. That was his testimony yesterday.

A. Well, I don't think he knows.

Q. Well, perhaps he doesn't think you know some things, but that was his testimony.

Mr. BURCHMORE. Yes. What is the point, Mr. Commissioner?

By Com. PATTERSON:

Q. That would bring the rate per bushel down pretty low, this $2.50 charge, wouldn't it, if his testimony was correct?

A. Well, if his testimony was correct it might be, but on soya beans, as an example, the normal unit of purchase is 1,500 bushels. When we buy a car of soya beans the seller understands that he is to ship us 1,500 bushels of beans. Now, there may be more or less.

By Mr. BURCHMORE:

Q. How many cars is that?

A. 1,500 bushels? One car.

By Com. PATTERSON:

Q. One car?

A. 90,000 pounds.

Com. PATTERSON. Well, I just was computing in my own mind just how prejudicial one-eighth of a cent a bushel might be, but we won't go into that at this time.

Mr. BURCHMORE. Well, I wish the Commission would, and
672 I wish the Commission would announce that it had an idea that one-eighth of a cent a bushel did not amount to much in the grain trade. We would bring a flock of grain men in here who would be very much upset by that.

By Mr. BURCHMORE:

Q. I will ask you—you have ~~something~~ to do with sales and operations and you are a director ~~of the company~~?

A. I am a director of the company and I have a number of accounts which I am responsible for.

Q. What is the view of this company as to the significance within its own operations of the difference in cost that come down to one-eighth of a cent a bushel?

A. I would say that one-eighth of a cent a bushel is a whale of a lot.

Q. Modern business is conducted on a very close margin?

A. Absolutely.

Com. PATTERSON. According to the newspaper reports in the last couple of days, you have been able to overcome that in pretty good shape.

By Mr. BURCHMORE:

Q. Well, would you be taking the position that the railroads were subjecting you to an unfair, unjust, and prejudicial charge if they applied from your plant $2.50 and applied $2.50 from every other plant in your line of business?

A. Read the question, please.

673 (Question read.)

A. Well, I don't know why they should pick out that one particular line of industry to be a goat.

Q. Is there any industry, industrial company engaged in the corn products or soya-bean trade that you have been able to learn of, that is being charged or demanded or having exacted on its traffic any such charge of $2.50 or charge amounting to this $2.50 charge applied on your business?

A. There is no such charge applied.

By Com. PATTERSON:

Q. Let's state that question a little different. If all the industries operating in the same manner, so far as railroad operation is concerned, were charged $2.50 per car, would you have any complaint?

A. Certainly would; yes, sir.

Q. Then you don't want anybody charged $2.50 a car for whatever service they might get?

A. We compete with a great many articles that are not made by this particular industry.

Q. Well, I realize that, but I asked the question if all other concerns operating under similar circumstances were charged $2.50 would you have a complaint?

A. You mean——

Mr. BURCHMORE. In every line of trade, he means.

The WITNESS. Oh, if everybody had it alike; no.

Com. PATTERSON. That is right.

674 By Mr. BURCHMORE:

Q. Well, now, suppose everybody has it alike but it is unreasonable, results in an unreasonable freight charge, total freight charge, would you reserve the privilege of complaining about that?

A. Yes, sir; if it was unreasonable per se; yes.

Q. Now, then, have you any impression or understanding from your knowledge of freight rates as to what the American system of freight rates has been?

A. Yes; I have.

Q. One freight rate to cover every service?

A. That is right, from point of loading to the point of unloading.

Q. That system hasn't been changed and you are not proposing that it shall be changed?

A. No, sir.

Q. Now, during—well, let me get one or two steps further here. Have you, in the movement of the traffic of the A. E. Staley Company, endeavored to confine that traffic to railroad routes, or have you used all types of transportation, or what, if any, policy have you had in that regard?

A. Our policy has constantly been, so far as possible, to confine it to rail routes. Now, there have been some exceptions to that.

Q. Are there movements of traffic in carload quantities of various commodities between various points and in various
675 directions, as regards Decatur now—Decatur is either an origin or destination—where the trucks offer a cheaper cost transportation than the rails offer?

A. Yes, sir; when you take into consideration the $2.50 charge. Truck lines, for instance, on a truck minimum of 20,000 pounds, will handle commodities at railroad carload rates, and we have certainly given it to them.

Q. And do the trucks impose any barrier that they will not come into your plant but only approach the gate and let you bring the goods out to them?

A. No, sir; they go in there and pick it up at point of loading.

Q. Throughout the plant as the physical ground permits the trucks to run?

A. That is right.

By Com. PATTERSON:

Q. That hasn't been any active competition up to date, has it?

A. We are doing it every day, practically.

Q. You are?

A. Yes, sir.

By Mr. BURCHMORE:

Q. Well, have you endeavored to stay by the railroads and not turn to the trucks?

A. Up until 1934 I never as much as interviewed a truck man; I was always conveniently busy when he called on me. And subsequent to that time I have broken down and I have
676 been giving him some business.

Mr. BURCHMORE. Mr. Commissioner, we want no appearance here that we are saying to the Commissioner, or to the carriers——

Com. PATTERSON. Off the record.

Mr. BURCHMORE. Well, I want this on the record, if you don't mind.

Com. PATTERSON. Well, I know, you can put your statement on the record after I get through. Off the record until I get through.

(Discussion outside the record.)

Mr. BURCHMORE. We want nothing in this record to imply to the Commissioner or the railroads that we are saying that, here, if this charge is continued, and so forth, just look out, we are going to use the trucks and give up the railroads and all that. We are intending to say earnestly that we think—and I will ask Mr. Burwell if this is what he means by it—that we think that the railroad testimony in this case is correct, that the railroads want their patrons to feel that it is a valuable asset to them to be located on the rails and to have private side-track connections with the rails, and that imposing any penalty for the rail delivery at point of loading or unloading in a plant tends—just the fact of that penalty tends to make traffic flow to highways instead of the rails, and to waterways instead of the rails.

677 It is an inevitable tendency and the higher you make that terminal cost the stronger that tendency becomes.

Q. Is that the whole extent of what you want to lay here as the position of the company?

A. That is; yes, sir.

Mr. LE FORGEE. I would like to withdraw Mr. Burwell and have a word with both of you, if the Commissioner will permit us.

Com. PATTERSON. Yes; we will take a recess for ten minutes.

(A short recess was taken.)

Mr. BURCHMORE. We would like to offer as an exhibit, but will have to ask leave to withdraw it for the purpose of making copies, a bill of lading as illustrative of the present practice of having the bills show the track location of cars of inbound freight.

Com. PATTERSON. That will be received and identified as Exhibit 25.

(Exhibit 25, Witness Burwell, marked for identification.)

By Mr. BURCHMORE:

Q. Is this a representative such bill, Mr. Burwell?

A. That is; yes, sir.

Com. PATTERSON. You will supply copies?

Mr. BURCHMORE. Yes. May I withdraw the exhibit and restore it to the Commission and we will supply copies for all counsel promptly?

By Mr. BURCHMORE:

678 Q. Mr. Burwell, there are two other matters I have specially in mind. Something was said yesterday about no-bills. Now, on outbound shipments what do you do with re-

gard to bills of lading, sending them to the railroads, and so forth?

A. Bills of lading are tendered to each of the outbound road haul carriers.

Q. If the shipment is going to a point, to New Orleans, over the Illinois Central?

A. The bill of lading is tendered to the Illinois Central. I might say, Mr. Burchmore, that to assist the carriers in their movement of that car, as soon as we receive the billing from our shipping department, a man in the traffic department phones the Illinois Central, as an example, on that car, and tells them that IC 176418 will be billed today to New Orleans and that it is to be handled from Building 20, if it might be a car of starch, or 17 if it is a car of syrup, and so forth.

Q. Is that for the benefit of the Illinois Central?

A. To enable them to perform the service they might perform if they served the plant direct.

Q. Have you had in consideration, in adopting that telephone practice, that you wanted to put the other four roads on as near an even keel with the Wabash as possible?

A. That is right; yes, sir.

Q. And overcome any little handicaps that might be incident to their not performing the terminal service?

679 A. That is right.

Q. Now, have you observed that the Wabash has attempted or appeared to attempt to give the very best service it could for the other roads as well as themselves?

A. I think they have; yes, sir; but you would have this case: unless we did phone the I. C. that information, they would not be in a position to give the Wabash the switch order until they had received the bill of lading. Now, this permits them to issue the switch order five or six hours in advance of the receipt of the bill of lading.

Q. Then you send the bill of lading over to the Illinois Central agent, if you please?

A. Yes; as a confirmation, of course, of the telephone conversation.

Q. And does he execute the bill of lading?

A. Yes, sir.

Q. So the bills of lading on outbound shipments are entered into between your company and the road haul carrier, whichever one it shall be, and the bill of lading subsequently passes between your office and the agent's office of that road haul carrier?

A. It does; yes, sir.

Q. And unless the Wabash Railroad is the road haul carrier, the Wabash Railroad, so far as you know, never has any contact with the bill of lading?

680 A. I know they do not have any contact unless they are going to haul the car out.

Q. Well, at one hour of the day do you customarily start making out bills of lading and shipping orders?

A. At the present time we cut off at 3:30 on weekdays and at noon on Saturdays. Now, we change our schedule monthly on account of daylight saving into Chicago and we will not bill anything after 3:00 o'clock on weekdays.

Q. And what time of the day do the present freight trains leave Decatur?

A. Most of the through train-schedule trains to the East, for example, and other through trains, leave in the evening.

Q. Does cutting off the bills of lading at 3:30, that is, the making of them out, and so forth, does that work in with the railroad operating methods, as you see it, or running their trains out?

A. The reason we had to have a cut-off time was so that the billing could get to the railroad, they could issue their waybills from the bill of lading and get the waybills to the yard office in sufficient time to enable them to move them in their scheduled train.

Q. If you know, please state whether or not it sometimes happens that cars are completely loaded, that the loading is completed on a given day, but the bill of lading isn't made out that day?

A. That happens quite frequently; yes, sir.

681 Q. And how long a time elapses before the bill of lading is actually made out and the railroad, the line haul carrier, notified on such a car, ordinarily?

A. Well, as an example, a car might be loaded this afternoon subsequent to 3:30. The Wabash, after 4:00 o'clock this afternoon, would pull that car out into their classification yard. Now, the billing instructions are not to be given by phone until tomorrow morning. The bill of lading might be issued tomorrow afternoon or tomorrow morning.

By Com. PATTERSON:

Q. And in that case, it would result in some extra switching for the Wabash, would it not?

A. Not one particle of extra switching; no, sir. The car, Mr. Commissioner, would go out into the classification yard. That is where they would take it ultimately if they had the bill of lading.

By Mr. BURCHMORE:

Q. If the——

Com. PATTERSON. Just a minute, I want to follow this a little farther.

Mr. BURCHMORE. I am not through.

By Com. PATTERSON:

Q. I said it might cause some additional switching for the Wabash Railroad if that obtained. They take it out into the classification yard but they would assemble it with other cars in the classification yard that would have to be moved out from behind it or in front of it, or whatever it is; they would not all be hold cars there?

682 A. No; I don't think they would all be hold cars.

Q. So they would have to get the rest of them around it?

A. Possibly.

By Mr. BURCHMORE:

Q. Well, let us just see a moment. Do you give any directions to the Wabash that they shall take those cars out and hold them out in their yards, or do they do it without any instructions from you, or what are the circumstances that cause those cars to go out when no one has ordered them to go yout yet?

A. The general yardmaster of the Wabash Railway at Decatur has general jurisdiction over the Decatur yard, including the Staley plant, and I suppose on his instructions or somebody else's instructions connected with the Wabash, they go out there. Certainly we don't tell them to take them out.

Q. Suppose they did not take them out but left them at the plant area where loaded, and took the cars that were billed and not those that the bills of lading were not yet issued, would that, in your judgment, make any less or more trouble and work for the Wabash than the way they do it now?

A. In my judgment it would cause more work, cutting a car back in, than if they took it out and did it in their own yard.

Q. Those cars are subject to a demurrage charge under the demurrage rules?

A. That is right, we have 48 hours from 7:00 a. m. after loading in which to bill them.

By Com. PATTERSON:

683 Q. Where does that demurrage time start, at your plant?

A. It starts, Mr. Commissioner, at 7:00 a. m. after the car has been placed for loading until we release it by the issuance of a bill of lading.

Q. Then when does that demurrage start, when they take it from your platform or when it leaves town?

A. When we give them the bill of lading.
Q. When you give them the bill of lading?
A. Yes, sir.

By Mr. BURCHMORE:

Q. I think there is just one other matter. Have you, from time to time, since the Commission's report was issued back in 1936, conferred with the Commission in Washington with regard to your status and your obligations and your methods and what you should do to comply with the spirit of the Commission's main decision, 209 I. C. C. on page 12, as well as the 55th Supplemental Report?

A. I have conferred with the members of the Commission's staff; yes, sir.

Q. And in such conference please state whether or not you were informed by the Commission itself that these matters were in the charge of a certain official of the Commission?

A. I didn't talk to the Commission as a body assembled, but I understood that the particular matter at hand was being handled by Mr. W. P. Bartel, who is Secretary of the Commission.

Mr. BURCHMORE. Well, Mr. Commissioner, we want to
684 avoid controversy or technicalities or undue discussion. As counsel I did consult with the Chairman of the Division, of Division 3, and with the Chairman of the Commission and the Secretary of the Commission from time to time on various occasions about this Staley matter, and was informed that all matters should be considered with Mr. Bartel. I state that as counsel and having communicated that to Mr. Burwell.

By Mr. BURCHMORE:

Q. Well, now, after the Commission's report came out, 55th Supplemental Report, the record already shows, and you, I believe, testified at the former hearing about that, that Staley discontinued the operation of its engines, that the allowance was relinquished, the allowance was cancelled, and for a time the Wabash did the intra-plant switching and all of the movements from the so-called Burwell yard to the loading and unloading points in the plant, the other roads by what might be described as a pool car arrangement. You are familiar with that?

A. I so testified, Mr. Burchmore.

Q. And it has been covered by the previous witness here. Well, now, did you in June of—well, strike the date—and as the matter progressed, the pool arrangement was discontinued and the present arrangement came into vogue by which the cars are all brought to and taken from the plant by the Wabash and interchanged with the other railroads in their regular interchange yards?

A. Yes, sir.

685 By Com. PATTERSON:

Q. What date was this pool arrangement discontinued?

A. At 11:59 p. m. on December 9, 1937.

By Mr. BURCHMORE:

Q. Or approximately then.

Mr. LE FORGEE. More or less. Did you say June 9, 1937?

The WITNESS. December 9, 1937, at midnight.

By Mr. BURCHMORE:

Q. Well, now, up to that time there was pool engine arrangement and after that time it was the arrangement of the line haul roads in and out of Decatur interchanging at their regular interchange yards and the Wabash bringing the cars to and from the plant?

A. That became effective at 12:00 a. m., on December 10, 1937.

Q. Well, now, if no question had been raised and if there had been no difficulty with regard to charges, and so forth, would the service itself under the pool power arrangement have been reasonably satisfactory to you?

A. It would; yes, sir.

Q. And did you ask the carriers, or notify the carriers, or suggest to the carriers, that they discontinue that pool power arrangement and discontinue the interchange tracks?

A. Yes, sir.

Q. Were there certain reasons why you did that?

A. Very controlling reasons; yes, sir.

Q. What was the first reason?

686 A. Because the Commission indicated to us, or members of the staff of the Commission, that we had done nothing out there to bring our operation within the general order in Ex Parte 104, Part 2. Although we had religiously tried to do that, the statement was made that "all you have done is substitute a Wabash pool engine for a Staley engine; unless you do something more than that we are not going to reopen this case on changed conditions."

Q. Those were discussions with Mr. W. P. Bartel?

A. That is right.

Q. The Commission, at the time of those conversations, had denied your petition for reopening?

A. Yes, sir; we had two or three petitions, I think, at that time. I don't know whether it was denied or whether it was pending at that time. I think perhaps it was when we were in Washington to file that petition that we had an informal conference. I don't know the status.

Q. And were you advised or did you understand the advice to be that so long as the interchange tracks were used and so long as there was a pool arrangement, those two facts were conclusive that it could not be the carrier's obligation and you must have to pay?

A. That is right.

By Com. PATTERSON:

Q. Well, did you understand that Mr. Bartel was speaking for the Commission?

Mr. BURCHMORE. He most certainly was, yes, there is no
687 question about that.

The WITNESS. That was my impression.

Mr. BURCHMORE. We were referred to him and he spoke with no uncertain terms about the matter. Now, we perhaps ought to blush for paying too much attention to it.

Com. PATTERSON. You, as an attorney, know that the Secretary can't speak for the Commission.

Mr. BURCHMORE. Can't he?

Com. PATTERSON. You, as an attorney, know that the Commission speaks through its orders only.

Mr. BURCHMORE. Well, I will argue about that a little later. I want to say that my advice from him and from the Commissioners was that our petitions for rehearing were denied because he had recommended, based on private reports that he had from inspectors, that it should be denied because the interchange tracks were still being used. Now, that was the best official information I could get and the only information I could get, as a matter of fact.

By Mr. BURCHMORE:

Q. Now, as another circumstance, do you recall filing this petition for suspension of the $2.27 charge?

A. Yes, sir.

Q. And that $2.27 charge was published in October or November 1937, by Agent Sperry?

A. Published in October, effective November 15, 1937.

Q. Now, I direct your attention to Agent Sperry's letter
688 of November 3rd, 1937, addressed to Mr. W. P. Bartel, and of which this copy was sent to me, in reply to your petition for suspension of the $2.27 rate. Do you recall, and are you familiar with that letter of his?

A. Mr. Sperry made an answer on behalf of the interested carriers; yes, sir.

Mr. BURCHMORE. The original of this letter is in the files of the Commission. Now, I direct the Commissioner's attention to Mr. Sperry's statements therein, and I ask you this question, Mr. Burwell, whether or not this position as thus taken by the rail-

roads, through Mr. Sperry, was one of the prime reasons for your action in suggesting and directing that your traffic no longer pass through that interchange and be handled under that pool arrangement?

The WITNESS. It was one of the controlling reasons and rather confirmed what the Secretary had told us.

Mr. BURCHMORE. If the Commissioner please, this is brief, and it is a very important part and it shows the real reason why we were forced to take that action. I would like to read briefly from this letter of the carriers, through Agent Sperry, to the Secretary of the Commission. May I do so?

Com. PATTERSON. Yes, sir.

Mr. BURCHMORE. As shown on the title——

Com. PATTERSON. What is the date of that letter?

Mr. BURCHMORE. This letter is November 3rd, 1937.

689 Com. PATTERSON. Addressed to?

Mr. BURCHMORE. Mr. W. P. Bartel, Secretary, and so forth. It starts: "In your letter of October 28, 1937, you advise that a petition has been filed on behalf of the A. E. Staley Manufacturing Company, requesting the suspension of proposed terminal charges at its plant, in I. C. C. 376," and so forth.

"As shown on the title page of the tariff, this charge is published pursuant to the decision of the Commission in Ex Parte 104, Part 2, 55th Supplemental Report. This report appears at 215 I. C. C. 656, and the order entered in conjunction therewith requires the carriers to cease and desist from paying an allowance to the Staley Company for spotting cars at its plant. As is alleged in the petition for suspension, the carriers ceased paying the allowance before the effective date of the order, and began performing the service themselves, one carrier performing it on behalf of all.

"Subsequently the Staley Company petitioned the Commission for reconsideration, alleging this change in operation, and the Commission denied the petition. At Page 656 of the Commission's report in 215 I. C. C., it is stated:

" 'The carriers could not now perform service beyond the present points of interchange without the operation of pooled power, i. e., one carrier performing the service for all the carriers involved. Service which because of industrial disabilities must be performed in this manner——' "

690 Now, if you will notice, Mr. Commissioner—I am interposing—"service which because of industrial disabilities must be performed in this manner" relates back to the performance by pool power. Now, going on with the quotation:

" '—service which because of industrial disabilities must be performed in this manner is in excess of the equivalent of team track

or simple switching delivery and beyond the scope of the carrier's legal obligations.'"

Then the letter continues: "The carriers interpreted this decision as requiring them to make a charge for the service formerly performed by Staley Company with its own power and now performed by the carrier."

And so, he says, they arrived at the $2.50. "The above sets forth the reasons for the tariff." I won't read the letter in full. I suppose we may use it in the brief. It is in your files.

By Mr. BURCHMORE:

Q. Was it that position thus taken by the carriers one of the reasons that prompted you to insist upon the discontinuance of the pool power arrangement that had been in effect?

A. Pool engine service; yes, sir.

Q. And did you inform all of the carriers accordingly in December 1937?

A. I did; yes, sir.

Q. Had you previously, in the month of June 1937 notified all of the roads that you did not desire and did not want and had no reason for wanting cars coming in and out of your plant to go to or from the interchange tracks?

691

A. When the order of the Commission in the 55th Supplemental Report became effective, I addressed a letter to all of the carriers and told them they should cease and desist using those interchange tracks.

Q. Please state whether or not you intended, in substance, to tell the carriers that you wanted your traffic handled in and out in their own way and it did not make any difference to you whether they used any interchange tracks or not?

A. I wanted them to handle it in and out of those tracks but not stop cars there, and do it in their own way so long as they did not use the interchange tracks.

Q. Were in you those matters guided by the advice of counsel?

A. Yes, sir.

Q. Please state whether or not in those matters you desired the carriers to give you service under the conditions defined and described by the Commission in its main report?

A. That is all I wanted and that was what I wanted.

Q. In all of your conferences with the staff of the Commission at Washington, have you ever had any suggestions as to how you could better put yourself in line with the Commission's decision and entitle yourself to an uninterrupted service at the carriers' convenience?

A. I have not. I think that Mr. King said we had that, and Mr. Heaney and Mr. Johnson.

692

Q. Now, if the Commission approves, and if the carriers want to handle your traffic by a pool engine arrangement or any other arrangement——

By Com. PATTERSON:

Q. Who is Mr. Heaney and Mr. Johnson?

A. Mr. Heaney is the superintendent who has been deceased.

Mr. LE FORGEE. He is dead.

By Mr. BURCHMORE:

Q. If the carriers wish to switch the cars to and from your plant in any other method than they use now, by pool power engine, or some other road do the work, or one road serve the elevator and another the coal dock, or any other method they want to work out, please state whether or not you are agreeable to such a method?

A. I am agreeable to any method that the carriers work out so long as we get the service we are getting.

Q. Would you like to have the Commission approve or disapprove such an arrangement?

A. I would rather have their approval. Then we will have a clean slate.

Q. Can you just state offhand how many investigators of the Commission have been in and about your plant for the last four or five years?

A. Do you want to include attorneys?

Q. Well, gentlemen of the Division of Service.

Com. PATTERSON. You can include one Commissioner for
693 an hour yesterday.

The WITNESS. There have been seven representatives of the Division of Service or Division of Safety, whichever it is.

By Mr. BURCHMORE:

Q. I am really speaking of inspectors.

A. There have been seven separate and distinct inspectors.

Q. Please state whether any of these inspectors have offered you any suggestions of improvement or change or betterment of the conditions.

A. They have not.

Q. Have any of them offered to you any criticism of anything they observed that was wrong that you ought to correct?

A. They did not.

Q. Have any of them pointed out any suggestions or honored you with their assistance, putting it very crudely?

A. They have offered no assistance, no.

Q. Please state whether or not you have received from representatives of the Commission visiting your plant a suggestion or

invitation that you file complaints with the Interstate Commerce Commission.

A. I have; yes, sir.

Q. What were those suggestions?

A. At Mr. Bartel's office in Washington, he asked me why I did not file a Section complaint. Mr. Lovering, at my office in Decatur, and again in Mr. Le Forgee's office, asked me why I did not file a Section 3 complaint.

694 Q. And a Section 3 complaint is what?

A. Alleging discrimination.

Q. With regard to your matter of terminal service?

A. Yes, sir.

Q. Did you construe or understand those references to amount to a suggestion that that would be a way you could get relief?

A. I was told that was an avenue of relief—that we had an avenue of relief, and why didn't we proceed to file it.

Mr. BURCHMORE. Now, before Mr. Burwell is subjected to cross-examination on this, may I make a very short statement as counsel?

Com. PATTERSON. If there is no objection, go ahead.

Mr. BURCHMORE. When this matter of Ex Parte 104, Part 2, was reopened, as counsel I went to members of the Commission and to the Chairman of the Commission and to the Secretary of the Commission to ascertain the purposes of the reopening and what it was that the Commission wanted to know, what was missing, and so forth. I made an examination of the official record of the Commission, that is to say, the contents of the ordinary bound volumes of orders, and so forth, and found in there nothing but the order of reopening, and I made inquiry of the Chairman and of the Secretary. I was informed by the members of the Commission that the matter was in Mr. Bartel's charge and under his supervision and he was the Commisison's spokesman in the matter; and then, when I learned that Mr. George B. Lovering

695 had been assigned to this matter as attorney to develop the facts, I made particular inquiry of him and I learned from the Commission and from the Secretary certain things with regard to the course of this case, but I was not able to get from any of them any light as to what it was desired the Staley Company should develop, what it was felt we should show, or what the purposes of this reopening are.

Now, we have offered here the testimony we consider appropriate on the suspension, and before we offer any other testimony with regard to the opening of Ex Parte 104, I would like to know what criticism or suggestions or wrongs or anything else may be

developed or suggested by the Commission's attorney or anyone else, that we may reply thereto, for I don't want—and we reserve the right to do that, for, if I may speak with the greatest of respect and without implying anything, Mr. Commissioner, I know you will agree that the A. E. Staley Manufacturing Company, as a shipper in interstate commerce, has no place to go but the Interstate Commerce Commission for justice, nor have these railroads with regard to matters of freight rates, and so forth, and you would not wish, I am sure, that the Commission should be in the attitude or seem to be in the attitude towards us of being prosecutor as well as judge; and yet, when we take the activities of the Bureau of Service, it does not seem to me that we have here a development of facts so far as we are concerned, but more the

696 case of a prosecutor and a detective.

Now, I have made this further point: I have suggested to counsel for the Commission and have suggested to the staff of the Commission that we ought to have their assistance in developing facts as regards this discrimination, and we have had a 100 percent refusal to assist us in any respect whatever in developing that there is any prejudice against us in this matter of terminal practice.

Now, one more thing I think your Honor should know. We had a case which we brought before the United States Court at Springfield for mandamus, and I would like you to have a very short statement of the course of that case. We filed a bill for mandamus on the eve of the effective date of the order in this case, June 10, 1937. On June 11, 1937, we filed this petition for mandamus and on June 12th it came on for hearing before his Honor, Judge Briggle, of the United States Court at Springfield, and in that bill we had understood and it was the basis for our bill that upon the effectiveness of the Commission's order on June 15th that the railroads propose to refuse to go into our plant and refuse to handle our traffic excepting to and from their terminals in the city of Decatur; and when we got up before Judge Briggle we were told by the railroad attorneys that that was not so, that they did intend to continue the service but that we would have to pay.

Well, that case—answers were filed and the Commission—

697 I think the Commission was not present at that hearing—an intervention was offered by the Commission and allowed and motions to dismiss were filed by the carriers and by the Commission, and cross motions, and the matter was finally set for hearing before Judge Briggle and heard by Judge Briggle on these preliminary matters of law and of jurisdiction on February 11th, 1938, and at that hearing on February 11th, 1938, this situation developed.

We asserted—the Commission's order was in effect, the carriers were doing the work and were demanding compensation. We had petitioned for a rehearing, I think, twice, and both petitions had been denied, so there was nothing pending before the Commission. We said to the Court that there was here an unjust discrimination and undue prejudice, and, of course, that was a question of fact. The Commission's attorney, since deceased, Mr. Ross, took the position that the Commission had exclusive jurisdiction to deal with the questions of prejudice and discrimination in interstate commerce, and that the Court had no jurisdiction. Of course, I felt that the Commission was refusing to exercise any jurisdiction. That was our position. And it rather seemed to me, without quoting the Judge, that the Judge intimated that it was unfortunate that he might have to try such a thing and unfortunate that the Commission could not be trying such a question, and it was stated in open court to him that the Commission was proceeding with its program of taking care of indus-
698 tries here and there and of imposing spotting charges and cutting off allowances, and I think the Court said, "Well, how fast are they proceeding and how long before they will get somewhere?"—words to that effect. He asked Attorney Ross of the Commission, "Well, how long before the Commission is going to act?" and Mr. Ross said, "Well, in a couple of months longer," and that was in February 1938.

So we filed shortly thereafter a petition for reconsideration by the Commission. I suppose Mr. Ross told the Commission that the Court would rather like to see the Commission reopen it; I don't know. The carriers supported our petition and the Commission reopened the case. Now, when they reopened the case, we supposed, when we read the order, that the Commission meant to reopen that case on the question that was before the Court, that is, in point of fact, is the Staley Company being denied the quality of transportation and rates with all the shippers of Decatur and with all the shippers on these railroads, but it turned out, when the matter came on before Examiner King, that we were limited to changes in the physical lay-out and the physical service and were not allowed to put in any testimony whatsoever regarding the fundamental issues before the Court.

However, without waiting for this Commission to act, and in good faith, thinking the Commission would deal with the real question, the plaintiff moved to dismiss, and on May 19th, 1938, the Court did dismiss—pardon me just a moment, I think I have the date wrong—the Court, without passing on the ques-
699 tions of law, without passing on the matter of jurisdiction, had deferred the matter for a time, and, without ever bringing that question up, when the Commission had reopened the

case, the plaintiff moved to dismiss without prejudice and the Court dismissed that case without prejudice.

Now, I ask your Honor to notice that that matter was in 1937 and it was in February, 1938, that the Commission's attorney said the Commission would act rather promptly. Then we had our hearing before Mr. King in July, 1938, and we have been waiting from July, 1938, until now, and at this minute we don't know what was wrong with Mr. King's report or what was wrong with the record in 1938, and we think we have suffered a great long time. Now, if the Commission's attorney would honor us with a reveal-ment of what it was the Commission ordered, why, we would try to meet it, but as it is I am going to ask to reserve any further proof or any further evidence until something has been said against us on these points.

Com. PATTERSON. Are you through with the direct examination?

Mr. BURCHMORE. I am through with the direct examination, Mr. Commissioner.

Com. PATTERSON. Cross examine.

Cross-examination by Mr. SMITH:

Q. Mr. Burwell, there are two or three things I wanted to
700 inquire about. I was interested in your figures about the movement of grain. I understood you to say that the soya bean movement extended over a period of about six weeks.

A. The heavy movement takes about six weeks, yes sir.

Q. The heavy movement takes about six weeks?

A. Yes, sir.

Q. I suppose, of course, you have some in-bound movement throughout the whole year?

A. Oh, yes; we had in this week, 45 cars.

Q. Yes; you had a few cars. Now, how about your corn movement? What is the heavy movement of corn into the plant?

A. Well, corn moves fairly normal with the exception that just prior to the time when they assess for taxes, a farmer may feel inclined to move his corn to market, but normally moves fairly evenly over the period of a year. In the fall, during the shucking season, if there is a shortage of crib room, there might be a little heavier movement, but corn moves more consistently over a period of a year than soya beans.

Q. Well, does corn normally move in any heavier volume during the fall than at other times of the year?

A: I think it might be a little heavier in the fall than in the spring.

Q. Well, now, during this period when soya beans are moving in the heaviest volume, are there times when you would have movements of 50 or 60 cars of beans into the plant for the elevators in one day?

701 A. Oh, yes; far in excess of that, perhaps.

Q. Now, let's see, Elevator "C" is the corn elevator, isn't it?

A. Elevator "C" is the storage elevator east of the plant.

Q. Yes.

A. Elevator "A" is the corn processing elevator and Elevator "B" is the bean processing elevator.

Q. Do you store soya beans in "C" too?

A. Yes, sir.

Q. Then would there be times when one engine would bring into the plant the 65 cars for placing on those four tracks at "C"?

A. Yes.

Q. At one time?

A. Yes, sir.

Q. Then you would work those 65 cars out, unloading them, with the aid of the car puller?

A. That is right.

Q. Then they would be removed and would there be other times when another lot at one time would come in to fill the capacity at one time, of those tracks?

A. Yes, sir.

Q. That is a normal thing during the heavy movement?

A. Yes, sir.

Q. Now, what is the capacity of the tracks at "A" and "B," the cars?

A. I do not have the information. It is in the previous record.

702 Q. It is in the previous record, I recall.

A. Yes, sir.

Q. Are there times there, whatever that capacity is, that an engine would bring in at one time cars that would fill up the capacity of the tracks at those elevators?

A. They do that if there is sufficient grain for Elevators "A" or "B"; yes, sir.

Q. And, of course, the more cars that are handled at one time in one cut, you would reduce thereby—that is true in any manufacturing process, the more units you handle, you reduce the cost per unit?

A. That is right.

Q. Now, you spoke about the mechanical devices for unloading, and I was interested in looking at them when I went through the plant. Now, what are they? You have mechanical shovels; that is one device, isn't it?

A. That is for unloading grain.

Q. For unloading grain; yes.

A. That is right.

Q. Is there any other?
A. The car pullers.
Q. The car pullers?
A. And the shovels, are the two things.
Q. So you are able to unload the grain rather promptly, even in large lots, are you not?
703 A. Very rapidly.
Q. Now, I was also interested in what you said about the trucks and the possibilities of truck movement. Do you ship glucose to points in Chicago?
A. Yes, sir.
Q. In substantial volume?
A. Yes, sir; Chicago is the largest candy manufacturing center in the United States, even in the world, and corn syrup, unmixed, if you please, instead of glucose, is the commodity that is used very extensively in candy manufacturing.
Q. Now, let's see, how far is Chicago, about?
A. 175 miles.
Q. 175 miles. Do you ship glucose or syrup to St. Louis?
A. Yes, sir.
Q. Let's see, that is about——
A. 110 miles.
Q. 110 miles to St. Louis. Do you ship to Indianapolis?
A. Yes, sir; that is about 150 miles.
Q. 150 miles. Now, then, are there any other large cities within a radius of, say from 100 to 250 or 300 miles, to which you make shipments in substantial volume?
A. Bloomington, Illinois, a candy company, is about 44 or 43 miles, very heavy users of corn syrup, unmixed glucose. Centralia is a very substantial point. There are a good many candy manufacturing points along on the west and east bank of
704 the Mississippi River in Illinois.
Q. Now, you are making some shipments, as I understand it, by truck today?
A. That is right.
Q. Under what circumstances do you ship by truck? Are they through shipments as directed by the consignee?
A. No, sir; directed by ourselves.
Q. By yourselves?
A. We select the mode of transportation.
Q. Well, under what circumstances do you make—what are the reasons why, in a particular case, Mr. Burwell, you would ship by truck?
A. Well, there are several controlling reasons. Service would be one of them. Service by truck is much better than it is by carrier, normally.

Q. That is, for these distances?

A. That is right, for short distances. And the other thing is, we take into consideration the cost, and this $2.50 charge is one of the factors that we must consider. I have a letter on my desk at this time, Mr. Smith, from a very substantial candy manufacturer in Chicago—or in Indianapolis, telling me that he has a 15-cent truck rate intrastate from a producing point in Indiana, which is in the Chicago switching district, to Indianapolis, which is 13 cents less than my rate by rail from here to Indian-
705 apolis interstate, and he wants to know if we will permit him to send a truck over here and pick it up in intrastate traffic. I don't know what the answer is yet.

By Com. PATTERSON:

Q. Well, under circumstances of that kind, wouldn't your remedy be to ask for a reduction in the line haul rate?

A. Well, Mr. Commissioner, I did just that thing before the man equipped himself to haul by truck. Here is a man at Danville, for instance, who has a rate of 11 or 13 cents from Chicago to Danville, Illinois. Now, there is a substantial candy manufacturer at Danville. The man's rate over at Indianapolis is on a higher basis. He is in the CFA territory while the Danville man is in the IAC territory. This man found he had lost the sale of a considerable volume of candies because he could not compete with the Danville man, and he talked about the truck competition and at my instigation and request it was placed on the docket of the CFA to reduce his rate to a basis that we thought was properly related to the rate to Danville, Illinois, and he was turned down by a majority vote of the lines who make the freight rates. Then he found it more easy to work out a truck rate on intrastate traffic than it was to work out a truck rate on interstate traffic. So business has been lost in that instance to a candy manufacturing company in Danville by reason of the fact that the carriers did not see fit to reduce the rail rate to Indianapolis.

Q. Well, the point I had in mind was, could it be ad-
706 justed to better advantage in the line haul rate than to try to adjust a switching rate.

A. Well, Mr. Commissioner, did you ever try to get a freight rate reduced?

Mr. BURCHMORE. Mr. Commissioner, I would like to ask this: If I came to a hotel and they started charging me for the soap, I would go across the street and go to another hotel that didn't; but I think that would be a poor way of doing it and I would still be sore about the soap.

Com. PATTERSON. If you wanted to use pear soap, perhaps, you might have to buy it yourself; I don't know.

By Exam. WEAVER:

Q. What percentage of your total traffic is now moving by truck?

A. Percentage?

Q. Yes; of the total traffic?

A. I would say it is less than 5 percent of the total.

Mr. LE FORGEE. I did not understand your question, Mr. Examiner. Will you give me the question, please?

(Question and answer read.)

By Mr. SMITH:

Q. Well, now, Mr. Burwell, are there truckers who stand ready here to haul glucose and corn syrup from Decatur to these points within a radius of from 30 to 40 or 50 miles, to Bloomington, and to points within a radius of 250 or 300 miles?

A. Mr. Smith, I have had executive officials of the truck
707 lines, vice presidents, come in here with blueprints of tank trucks that they propose to build that I am supposed to use; build special equipment for handling this stuff to Chicago and other points around here at carload rail rates.

Q. That would be carload rate, with a smaller minimum, I take it?

A. That is right.

By Com. PATTERSON:

Q. That would be interstate trucking?

A. Chicago, of course, would be state and Indianapolis would be interstate. But they propose to build special equipment at considerable cost to themselves.

By Mr. BURCHMORE:

Q. Well, they wouldn't get that in your plant?

A. What is that?

Q. Corn syrup.

A. Certainly.

Q. What I am getting at is, if it is just a matter of freight rate from Chicago to Decatur, is there terminal service in it, too?

A. Terminal service both here and at destination.

By Mr. SMITH:

Q. That is, they would come right to your plant?

A. Yes, sir.

Q. Within the plant?

A. Yes, sir.

Q. And they would go to the plant of the candy company at Chicago?

708 A. That is right.

Q. And deliver it right at the door?

A. That is right. Now, Mr. Smith, I might give you a little education here about the movement of corn syrup. I imagine you would like to have it.

Q. I would.

A. We currently move corn syrup to what we call a filling station in Chicago. That is located on the Milwaukee Railroad and you can imagine that the service via the I. C. and Milwaukee switch delivery isn't anything to brag about. And from that filling station we operate a fleet of tank wagons.

Q. Within the city?

A. Within the city, and they take it into storage in that plant on the Milwaukee Railroad, put it into a tank wagon, and take it in the tank wagon and deliver it out to customers through a spout in the sidewalk or the pavement. Now, we just cut out all that tomfoolery and move it direct to that spot by truck and get very superior service.

Q. Now, going back to this minimum, Mr. Burwell, are there cases where the truck minimum would more nearly suit the convenience and needs or just requirements than the rail minimum?

A. In a great many cases, yes, sir; a great many cases.

Q. Have you pointed out from the standpoint of service the time—I take it, in most instances, that is, to Chicago, I suppose,

709 trucks could make it in just about as fast time as even the direct route, possibly shorter?

A. Much shorter than the rail line.

Q. Do you find that there is more of an effort now to persuade you to go to truck service than heretofore by the truckers, more propositions laid before you?

A. Mr. Smith, you may or may not know it, but I was formerly a railroad man and I think once a railroad man always a railroad man, so I consider myself probably prorailroad and I have no leaning particularly toward the trucks, but I do say to you, in all fairness and frankness, that the trucks have been very intense in their solicitation, even offering to build special equipment. I had a man in my office the other day wanting to build special equipment to haul coal. Now, they are willing to put money into this special type of equipment to haul our commodities.

Q. Now, that coal is mined—does that come from the Springfield district?

A. The Springfield district; yes.

Q. What special type of equipment would he build for that?

A. Well, he had drawings of the equipment that he proposed to build. All he wanted me to do was agree to use it and he would place an order for it.

Q. Now, at the present time there is no regulation under the state law of intrastate rate of the truckers in Illinois, is there?

710 A. That is correct, there is no regulation so far as the rates are concerned.

Q. Yes; I am speaking about rates.

A. That is right.

Q. The Illinois Legislature passed a bill just a year ago providing for——

A. Certain types of regulation.

Q. Certain types of regulation and safety and things like that?

A. That is right.

Q. But deliberately omitted any regulation of rates?

A. That is right.

Q. So the intrastate trucker here can make whatever rates he needs or wants, or whatever rates will get the business?

A. Just as the intrastate trucker in Indiana makes a rate on corn syrup, unmixed, in Indianapolis.

Com. PATTERSON. I don't see that this examination is getting us anywhere. If it is the most economical way to send it by truck, everything considered, I presume that is the way it should go. I think the railroads should make an effort—of course, they are making an effort—but I don't see why the railroads should be permitted to get business they are not justly entitled to from an economic standpoint.

Mr. SMITH. Well, Mr. Commissioner, I haven't read Commissioner Eastman's four volumes yet, but we think, taking

711 into consideration the social cost, it isn't an economic system of transportation.

Com. PATTERSON. Well, if it isn't an economic system, perhaps the railroads should get it.

Mr. SMITH. I understand he has a section dealing with motor trucks in which he thinks they are probably paying their way. There may be something to be said on that score.

By Mr. SMITH:

Q. That brings me to this question, in view of what you said as to your attitude to the railroads: In adopting that attitude are you giving recognition, Mr. Burwell, to what, after all, is the indispensable character of rail service and the necessity of maintaining an adequate system of rail transportation.

The WITNESS. That is the reason I feel as I do. We have got to have the railroads.

Q. In other words, your position is as outlined by Mr. Shackell yesterday?

A. That is right.

Q. You couldn't get along without an adequate system of rail transportation?

A. No, sir.

Q. In your business?

A. No, sir.

Q. Even though you might use the trucks to Bloomington or Indianapolis?

712 A. No, sir; we could not.

Q. I was also interested in about what you said as to the reasons that prompted you to give the directions you did in December of 1937, I think. Now, whatever the reasons and wholly aside from the question of whether you should have acted upon the advice from the Commission's staff without going to the full Commission, as I understand your position, you felt impelled under all the circumstances, whatever those circumstances were, to treat yourself as an industry served by one railroad alone?

A. That is right.

Q. You did not have anything to do with the location of the five railroads in Decatur, did you, Mr. Burwell?

A. No, sir; positively not.

Q. Now, of course, you could overcome that handicap, if it is a handicap to an industry to be located where there are five railroads, by moving out to a local station on one of these lines?

A. That is right.

Q. Then you would not have these problems arising from the fact that you have five railroads in Decatur?

A. No, sir.

Mr. BURCHMORE. Mr. Smith, I think that perhaps you are misled by one question I asked him. He was not guided by what a member of the staff told him, he was guided by what Agent

713 Sperry said and what the Commission said in its decision, plus what the director of the staff said on the same line, the three creating a situation where it was felt there was no other alternatives, under the tariffs as they were.

Mr. SMITH. Well, all those considerations entered into it, but the point that interested me is that he could overcome all those by moving his plant out to a local station on one of these trunk line railroads.

By Mr. SMITH:

Q. Well, do you consider, Mr. Burwell, that the fact that there are five railroads in Decatur is your handicap or their handicap?

A. It certainly isn't mine.

Mr. BURCHMORE. Isn't it an advantage, Mr. Smith, not a handicap? That there are five railroads in Decatur?

Mr. SMITH. Well, I should think so, but I get the very distinct impression, particularly from the Commission's report——

Mr. BURCHMORE. No, no; may I direct your attention to this: Here is a concern in Decatur which has physical plant track connections only with one railroad. By virtue of the reciprocal switching tariff and the way your rates are published, that industry with physical track connections with only one railroad has all the advantages of being located on all five. Now, we think that under that tariff situation the Staley Company ought to have all the advantages of being located on the five railroads without having all five railroads actually come in.

714 If you see the point.

Mr. SMITH. Yes; I agree with you, but I get the very distinct impression, if I may say so, from reading the Commission's report in this case, that the case was turned against the Staley Company because there were five railroads here and because there would have to be pool service, which seems to me not to be a handicap of the Staley Company but to be something the railroads themselves have to deal with, if there is any responsibility anywhere. Because there are five of us here, that certainly ought not to be turned into a handicap of the Staley Company.

The WITNESS. Mr. Smith, further in response to that question of yours, of course, our hindsight is always better than our foresight.

Mr. SMITH. Always.

The WITNESS. The Staley plant was originally served only by the Wabash Railway, and it looks now like we were pretty dumb to let any of the rest of them build into the plant.

Mr. BURCHMORE. On these hypotheses that we have got here, of course.

The WITNESS. Certainly, based on the results.

By Mr. SMITH:

Q. Did I understand you to say, Mr. Burwell, that you are getting all your coal in intrastate commerce?

A. That is right.

Q. So far as your out-bound shipments are concerned, do

715 you ship for long distances, that is, to the Eastern Seaboard and the Southern and Southeastern Seaboard?

A. Yes, sir.

Q. Do you ever ship to the Pacific Coast?

A. Yes, sir.

Q. Do you ship to the Intermountain territory?

A. Yes, sir.

Q. The Southwestern territory?

A. Yes, sir.

Q. And you use the rails, of course, for those shipments?

A. We do, Mr. Smith, we use the Federal Barge Line in connection with some export shipments and we use the steamers of the Intercoastal Line from Savannah, Georgia, and New Orleans in connection with shipments moving to the Pacific Coast Seaboard.

Mr. SMITH. I think that is all.

Mr. LE FORGEE. In the light of Mr. Smith's examination in relation to this trucking matter, it has occurred to me that there are probably two or three other matters in connection with that, and particularly in the light of the Commissioner's question, that might give you further information which you may wish to consider.

By Mr. LE FORGEE:

Q. Mr. Burwell, when starch is prepared for shipment, how is it prepared?

A. Either in bags or in cartons, for household use.

Q. And when oil is shipped, does it go in tins, tin boxes,
716 or how?

A. Oil is shipped in tin cans, it is shipped in returnable steel drums, it is shipped in wooden drums, it is shipped in five- and ten-gallon jacketed cans. It is shipped in small containers for household use.

Q. When the glucose you mentioned is shipped, how is it prepared?

A. Corn syrup, unmixed glucose, moves in tank cars or in wooden barrels, or in returnable steel drums.

Q. When Caledex, Staycal or Stayco-A, being specialties of the company, are shipped—and that is used by paper manufacturers, in a way, isn't it?

A. Those are merely trade names for starch.

Q. Yes, and how are they shipped?

A. 140-pound jute bags.

Q. When feed is shipped, how is it shipped?

A. In 100-pound jute bags or cotton bags.

Q. Now, the products that you have named, how much of it is capable or practical to ship by truck?

A. As to the commodities?

Q. Yes.

A. All of that that does not move in bulk.

Q. And do you refer to that as the oils?

A. I refer to that as oil in tank cars, or corn syrup, unmixed,
in tank cars, which could, of course, be barrelled and trans-
717 ported.

Q. Was it in relation to those commodities, those fluids, that the truck company had submitted the proposition for the preparation of tank trucks?

A. The vice president of a line, truck line, residing in the city of Chicago, has submitted a proposition to haul corn oil to Chicago or any other point within the trucking radius, corn syrup, unmixed, glucose, and subsequently a separate and distinct proposition to handle in-bound coal in special equiyment.

Q. Do you have a warehouse in Chicago?

A. Yes, sir.

Q. And at Indianapolis?

A. Yes, sir.

Q. Milwaukee?

A. Mr. La Forgee, in Indianapolis and Milwaukee we have stocks in warehouses at those points, but we do not own them, those are public warehouses.

Q. I understand that, but there is an accumulation of stocks in warehouses, either privately owned or public warehouses in your account, at those various places?

A. Yes, sir.

Q. That is for distribution to the patrons in that community?

A. Either in that particular city or we drop shipments out of there, as we call them, to other customers in surrounding towns nearby.

718 Q. Do you make a cattle feed or similar products out of beans or corn products?

A. We make a cattle feed out of both beans and corn.

Q. I wish you would state to the Commission whether or not, at various points throughout the state of Illinois and the various agricultural districts, you have established or built or formed relationships for the storage of your products for distribution and sale to the farmers through the community?

A. Well, that is handled, Mr. La Forgee, through what we call dealer organization.

Q. Yes.

A. And we have so established, but it is through the dealer and not by the Staley Company.

Q. Yes; I understand that it is through the dealer. You sell to the dealer and the dealer reports to you and you carry the product down there and place it in these distributing points, do you not?

A. The dealer is really our agent and does that, yes.

Q. Now, are all of these products which you have named, with the exception of oil and fluids, about which you have explained the proposition made to you—are they susceptible and would it be practical to deliver those by truck?

A. Yes, sir; at a much better service.

Q. What do you mean by "better service"?

A. Take Chicago, for example, we can have a through
719 load of oil out of here, which we ship practically every day to Chicago, by truck, at the carload rail rate. It is out of here subsequent to 4:30 in the afternoon and it is delivered in Chicago the first thing tomorrow morning.

Q. Where?

A. At the customers' place of delivery.

Q. Either at his platform or the tank where he wants it unloaded?

A. Yes, sir.

Q. How many paved roads are there, concrete slabs, running from here to Chicago, do you know?

A. Well, there are numerous routes.

Q. Well, about how many?

A. Well, the 48 route and in connection with various routes running from that route, there are different routes using 48 from here, you have 66 through Bloomington—a number of them.

Q. As a matter of fact, there are at least half a dozen from Decatur by one process or another into Chicago?

A. That is right.

Q. And concrete pavement?

A. All the way.

Q. And how is it with reference to paved highways through the State of Illinois and into other agricultural points where storage is made for feeds and like commodities within a radius of 300 miles?

A. We have a very extensive system of concrete roads
720 within the state of Illinois, probably the best of any state in the Union.

Q. Would you be able to approximate or estimate what volume, what proportion, of the products of the A. E. Staley Manufacturing Company could be conveniently shipped as a practical proposition, by truck, within a radius of 300 miles of Decatur?

A. In response to Mr. Smith's question, Mr. Le Forgee, I said that Chicago was the great candy manufacturing center of the United States.

Q. Yes.

A. And a very substantial portion of our corn syrup, unmixed, could be trucked into Chicago.

Q. It is the greatest candy point in America, except Philadelphia, isn't it, probably larger than that?

A. It is larger than Philadelphia, it is the outstanding candy manufacturing center. Chicago is a very outstanding market for oil. There is a very substantial percentage of our oil that goes into Chicago, and there is considerable starch used in Chicago, and

a very substantial percentage of our total business could be trucked within the radius of 300 miles.

Q. Do you think it might run as much as 40 to 50 percent, or more?

A. Somewhere in the neighborhood of 40.

Q. I think that is all—oh, just a moment. You are a railroad man, are you not?

A. I have been all my life.

721 Q. And notwithstanding some perhaps financial benefits which have been discussed in the organization out there, you have been rather strong and are still strong for railroad traffic, as I understand?

A. I had an awful time and I was very severely criticized in our organization by outside efficiency experts in 1932 because up to that time I had not used trucks. I convinced the management over their recommendations that I was right, and it wasn't until two years after they got out of the organization that I broke down and used the trucks.

Q. And you have been engaged in closing argument ever since?

A. Yes, sir.

Mr. LE FORGEE. All right.

Com. PATTERSON. Notwithstanding all the efficiency experts, you insist on giving this traffic to the railroads whether they are entitled to it or not?

The WITNESS. Well——

Mr. LE FORGEE. I did not quite put the question that way, Mr. Commissioner.

Redirect examination by Mr. LE FORGE:

Q. Your leaning and preference, without a severe financial loss is to the railroad companies?

Com. PATTERSON. Everything being equal, he leans toward the railroads.

Mr. LE FORGEE. Yes; very decidedly, and so do I.

The WITNESS. Mr. Commissioner, you see, this is what
722 happened: Shortly after I reached the tender age of 17, I finished high school and went to work for the railroad and I learned in the early days of my young life that I should be a railroad man.

Com. PATTERSON. I have been a railroad man all my life and sometimes I am considered as being prorailroad, but I deny it.

By Mr. BURCHMORE:

Q. When you speak about expecting good railroad service, the railroads have to be on their toes in matters of service as against trucks as well as matters of rates?

A. Oh, that is right; yes, sir.

Q. There have been some questions asked of you, not on the witness stand, but outside here, I believe, and perhaps on the witness stand, about hot shipments. You have hot shipments by railroad sometimes?

A. I think a hot shipment is a railroad hot shipment and not a Staley hot shipment.

Q. It is pretty important to the railroads that they should not let their shipments move pretty slow?

A. That is competition between the Decatur lines that creates the hot shipments.

Q. And collectively the Decatur lines are competing with all other railroads and with trucks?

A. That is right.

Mr. BURCHMORE. That is all.

723 Com. PATTERSON. Cross-examine.

Mr. LOVERING. I have a few questions.

Re-cross examination by Mr. LOVERING:

Q. Mr. Burwell, you gave us some figures on the number of shipments in and out during the week April 15–April 20th. Have you any figures there as to the intraplant movements during that same period?

A. Yes, sir.

Q. Would you mind giving them to us?

A. On April 15th——

Mr. BURCHMORE. The question is as to intraplant movements for which the intraplant switching charges are assessable?

Mr. LOVERING. Any way, just to get the volume of the movement.

The WITNESS. We issued 27 intraplant switching orders on the 15th; we issued 50 intraplant switching orders on the 16th; we issued 10 intraplant switching orders on the 17th; we issued 12 intraplant switching orders on the 18th; we issued 32 intraplant switching orders on the 19th.

I would just like to say there, Mr. Lovering, as a matter of explanation, I happen to notice that on the first car it was a car of boxes. That was a car where it had been placed for unloading and we desired to complete the unloading at a second point within the plant and we moved it over there and paid the switching

724 charge on that. There are some of those as well as strictly intraplant switching.

On the 20th we issued switching orders for six cars.

By Mr. LOVERING.

Q. Would you be able to say how many switch movements would be involved in those orders?

A. No, sir. You mean as to the detailed handling of that car?

Q. Yes.

A. No; all I know is that we paid the tariff charge provided for moving the car from one building to another.

Mr. BURCHMORE. Pardon me just a minute, Mr. Lovering.

Mr. LOVERING. Yes.

Mr. BURCHMORE. If you will permit, for the purposes of the record and not to be technical, but I want it recorded on the record, the Commission's order reopening this Ex Parte 104, Part 2, contains a certain reference to intraplant switching. Of course the I & S case has nothing to do with that at all.

Com. PATTERSON. No.

Mr. BURCHMORE. I want to raise the point that the Commission has no jurisdiction whatever with regard to intraplant switching, just to record it on the record.

Com. PATTERSON. All right.

Mr. BURCHMORE. And, therefore, it is not properly within the scope of this investigation.

By Mr. LOVERING:

Q. Will you state, Mr. Burwell, when you speak of 27 movements of that kind on April 15th, that means 27 individual cars?

725 A. That is right, separate and distinct cars.

Q. There would not be two or three cars included in the one order?

A. Oh, no.

Q. At Elevator "C" are all four of those unloading tracks used in daily use?

A. If the volume of cars was unloaded out there, that would be true; yes, sir. If they only had 15 cars, you would not divide them up and put them on four tracks; you would probably put them on one.

Q. Can you state, please, whether—do you think the $2.50 spotting charge that you are now paying on interstate commerce is higher than what you would pay if you were doing your own switching?

A. Do you want my own opinion for what it is worth?

Q. I would like to have your opinion; yes, sir.

A. Well, I have an idea, based on what the railroads paid us for doing the work when we do it, that it is much higher.

Q. In other words, it will be your idea that if you were doing your own switching you could do it cheaper than the railroads?

A. You are talking about my opinion now?

Q. Yes.

A. For whatever it is worth. My opinion is that the railroads paid us never more than $1.83, which was supposed to represent the actual cost of our doing the work, and when they
726 assessed the charge, for some reason they fixed it at $2.27, which under Ex Parte 123 went up to $2.50.

Q. Do you recall the basis—I don't mean the details of it, but what I am getting at is: is the $1.83 based on a course of cost study?

A. Yes, sir.

Q. What, in your opinion today, would be the cheapest way of handling your business in and out?

A. I haven't the least idea. I am not an operating man and I think that is something for the carriers to decide.

Q. Do you get transfer privileges on your trucking business?

A. No, sir. I hope to.

Q. Beg your pardon?

A. I said I hope to.

Q. You spoke of the percentage of the in-bound loads which have on the waybillls the designation of the final destination within your plant. Will you tell me when that was made effective?

A. I don't know the exact date.

Q. Approximately?

A. But I think it was somewhere around the first of the year; might be ten percent more or less.

By Com. PATTERSON:

Q. You mean the first of this year?

A. 1940.

By Mr. LOVERING:

Q. You spoke about writing to the carriers telling them to stop the operation by pool power?

727 A. Yes, sir.

Q. Can a copy of that letter be produced for the record?

Mr. BURCHMORE. We will be glad to; yes.

Mr. LOVERING. Can it be placed in the record?

Mr. BURCHMORE. You mean the letter of December 19——

Mr. LOVERING. Yes; that was the date.

Mr. BURCHMORE. Yes; we will be very glad to.

Mr. LOVERING. That was the one just before that tariff came out.

Mr. BURCHMORE. Identical letters were written to each of the five roads.

The WITNESS. I wrote a duplicate letter to the vice presidents of all five lines.

Mr. BURCHMORE. We will furnish those letters within a very short time and give copies to counsel.

By Mr. LOVERING:

Q. Mr. Burwell, when I was talking with you in your office and you were speaking about the delay in the handling of this case, as I recall it, you also mentioned something about some stand-by service of some one of the industries, I don't recall just which one it was, but I think especially in connection with the delay that I made the suggestion to you—did I not?—that you had your remedy and, in substance, asked you why you did not go ahead and exercise it?

A. I don't know that it had any relation to such conversation.

728 You told me I had an avenue of relief and why didn't I exercise it, and told Mr. Le Forgee in his office that I had that avenue of relief.

Q. Weren't we talking about the delay?

A. Not that I know anything about. I don't recall anything about that.

Q. You don't remember that being connected up with the question of delay?

A. I think you were in my office twice, on two different occasions, as I recall, and maybe we talked about the delay and maybe we didn't. I don't recall.

Mr. LOVERING. Mr. Commissioner, so far as what has been said here about the Commission and Secretary Bartel, there is nothing I can say about that because I don't know, although I can't help but feel it might be possible that he would have an answer to make if he were present.

Com. PATTERSON. Well, Mr. Bartel will take care of himself.

Mr. BURCHMORE. There is no charge here, we are just stating the facts. Apparently he felt for us but said we ought to exercise this remedy.

Mr. LOVERING. Something has been said here about the reason for reopening this proceeding. The only thing I can tell counsel on that or the only thing I can say is it is in connection with the Commission's order. That is all I know about it.

729 Com. PATTERSON. Well, you have stated that for the record two or three times, so there isn't any use repeating it.

Mr. LOVERING. It just seemed to be necessary to make it clear again. I feel that once is enough, too.

Com. PATTERSON. Is there any further cross examination?

Mr. LOVERING. I beg your pardon, I have no further cross examination.

Mr. BURCHMORE. May I just ask one question?

Com. PATTERSON. Yes.

Redirect examination by Mr. BURCHMORE:

Q. Mr. Lovering had you read the records for the week of April 15th to 20th on the cars, 102 cars, I think it is, handled in-

traplant, and you said one of those cars was boxes and was moved from one place to another to complete unloading.

A. That is right.

Q. There may have been more than that?

A. Oh, yes; I just happened to notice the first car on that day.

Q. That was a car of boxes that had been partly unloaded and then the car moved to another location. What did you pay for that?

A. $1.98.

Q. For any other of those cars that were moved to complete unloading or loading you paid $1.98?

A. Yes, sir.

Q. What did you pay if there some cars that were
730 moved from one point of the plant to another point of the plant, wholly disassociated from any prior or subsequent transportation and as a movement of material within the plant?

A. $3.47, provided there has been no prior or is to be no subsequent road haul movement.

Q. Well, now, is it fair to say that all of these 102 cars that you enumerated in that week, you either paid $1.98 or $3.47 to the railroads?

A. Absolutely.

Mr. BURCHMORE. That is all.

By Com. PATTERSON:

Q. There was some discussion in the last hearing with respect to a rearrangement of tracks prior to that hearing, in which I think it was stated there was a $50,000 evpenditure between the Staley Company and the Wabash Railroad.

A. You very grossly exaggerated the figure.

Q. Well, I don't know what the figure is, I am asking you. There was some expenditure?

A. Yes, sir.

Q. Do you recall how much of that was expended by the Staley Company and how much by the Wabash Railroad?

A. Only roughly. I would judge that probably 60 percent was for their account and 40 percent for our account. What happened, Mr. Commissioner, was this: that they wanted to build certain additional tracks and change their leads and delivery tracks, and it is our custom that they build up to the
731 right-of-way fence and we agreed to assume the expense incurred on our property.

For instance, Mr. Heaney, who was then the superintendent, called me one day and said, "We will be up to the fence tonight. Shall we come in and do the work for you tomorrow?" And they came in and did the work for us on our property. It wasn't

anything like $50,000; I would say the outside figure would be maybe $10,000 for the account of all parties.

Q. With respect to this so-called lease, I think that was Exhibit 14——

Mr. BURCHMORE. That is correct.

By Com. PATTERSON:

Q. I may ask some questions that are already in the record, because I am not familiar with the previous record. As I understand it, you started—that you ceased service of the leased tracks on the 23rd of June 1936, and subsequently on the 1st day of June 1938, you entered into this lease.

A. Now, Mr. Commissioner, I don't think—let me see that just a minute, will you, please, sir?

Mr. BURCHMORE. I think you have the date wrong.

The WITNESS. I think his dates are wrong.

Com. PATTERSON. Well, then the lease is wrong.

The WITNESS. No; here it is [indicating]. This is the paragraph you have to be governed by, down there, next to the last paragraph.

732 Com. PATTERSON. Well, I think I have it straight now.

By Com. PATTERSON:

Q. You ceased and discontinued the use of the tracks on the 23rd of June 1936?

A. So far as the Staley Company engines were concerned.

Q. So far as the Staley Company engines were concerned?

A. That is right; but the pool engines used them after that.

Q. But the pool engine used them after the 23rd of June 1936?

A. Until December 10, 1937.

Q. Until December 10, 1937?

A. As shown by that, that is right.

Q. And after December 10, 1937, the Wabash used them?

A. They acquired the tracks by lease; yes, sir.

Q. They acquired them by lease, but the lease was made on the 1st of June 1938?

A. Yes. There were a lot of negotiations that had to pass. We permitted them to use them with the understanding that the lease would be executed; but, of course, the Wabash were then, as they are now, under receivership and they had to go through a lot of court procedure to get authority for that lease.

Q. But, as a practical matter, the Wabash, so far as these tracks are concerned, just took over the work that the Staley engine had previously been doing?

A. Oh, no. What dates are you talking about?

Q. From the 23rd of June 1936—well, from the 23rd of June, 1936, until December 9, 1937, a pool engine performed
733 substantially the same service on these tracks that the Staley engine had previously done?

A. Yes; that is correct, just the same as was pointed out to me by a staff of the Commission, as if we had taken a Staley engine and painted out the "Staley" and put "Wabash" on it.

By Mr. BURCHMORE:

Q. Just a moment, was that done under your direction?

A. Oh, no; the physical movement was the same, but the——

Com. PATTERSON. No; I realize that.

Mr. BURCHMORE. There are a great many other things that were different. We brought that out before but we want to bring it out again if it is of any importance to your Honor.

Com. PATTERSON. No; it is of no importance, but I am trying to get in my mind what occurred with respect to the service there.

Mr. BURCHMORE. The Staley Company went to these so-called interchange tracks, previous to the 23rd of June 1936, and brought stuff in the plant, and brought stuff out, and put it on the interchange tracks.

Com. PATTERSON. That is right, and after this date it was done first by the pool engine and later on by the Wabash.

Mr. BURCHMORE. But there were many differences in how it was done and what was done, which we will be glad to point out.

Com. PATTERSON. Well, perhaps he would not know how the railroad did in.

734 Mr. BURCHMORE. Yes; but he did know and he testified that he knew and he told all about it at the previous hearing—not all about it, but sufficient about it. May I point this out.

By Mr. BURCHMORE:

Q. Previous to June 1936, will you say, Mr. Burwell, whether or not the Staley Company was performing service from the interchange tracks to the points in the plant under a contract with the railroads as their agent and under an allowance.

A. That is right.

Q. And were those engines operated under your supervision?

A. Under the supervision of our yardmaster; yes, sir.

Q. And were those engines engaged also purely for the account of the Staley Company in the movements of cars and materials in and about the plant?

A. Except that we also placed cars in the Mississippi Valley Structural Steel and took cars out of the Mississippi Valley Structural Steel.

Q. I was coming to that but let's take one thing at a time. Besides handling this stuff you speak of, first they did do intraplant work in and about the plant, that the Staley Company and the Wabash Railroad had nothing to do with?

A. That is right.

Q. And they did things, your engines, as agent for the railroads, performed service into and out of the Mississippi Valley Structural Steel Company?

735 A. That is right.

Q. Please say whether or not after June 1936 the Wabash engines were performing the service in and about your plant, first for their own account, and the account of the other railroads, and in the delivery and originating of freight.

A. They were; yes, sir.

Q. And were they, secondly, doing intraplant work for you and charging you for it?

A. They began assessing charges for intraplant work effective June 24, 1936. When we did the work under the cost study for the Terminal Allowance Committee, the trunk lines they had deducted a certain amount for the plant.

Com. PATTERSON. That is what brought that down to the figure it was, of course.

By Mr. BURCHMORE:

Q. And then it was a year later, or December 1937, before the change occurred again and the pool arrangement was entered into and the Wabash brought everything to and from the plant?

A. That is right.

By Com. PATTERSON:

Q. Then for the lease of these tracks you get $1 a year and certain other good and valuable considerations. Now, what is there good and valuable about—which you get from the Wabash Railroad?

A. The Wabash Railway, under that lease, as I recall, not having seen it for some time, agreed to maintain the property

736 and return it back to us at the expiration of the lease in the same condition in which it was received, ordinary wear and tear excepted. I think the terms of the lease provide that they shall pay the taxes on that property.

Q. Well, that is all included otherwise.

A. It is all in the terms of the lease.

Q. It is all included otherwise, but you state you get for the use of these tracks $1 a year and certain other good and valuable consideration.

Mr. LE FORGEE. A promise is a perfectly good consideration under the law. If the Staley Company turned them over, the

use of the tracks, and the Wabash Railway Company agreed to pay the taxes and do various other things provided in the contract, that amply complies with the term of good and valuable consideration.

Com. PATTERSON. Oh, I don't doubt that, but the——

Mr. LE FORGEE. The volume of the undertaking by one or the other is not the controlling element. It is a promise for a promise.

Com. PATTERSON. Yes; but then, as a matter of fact, you get as rent for these six tracks $1 a year, and that is all.

Mr. LE FORGEE. No.

Com. PATTERSON. What else do you get?

Mr. BURCHMORE. And the other terms of the lease.

Com. PATTERSON. Well, the other terms of the lease are
737 all stated in the lease.

Mr. LE FORGEE. To prevent it from disintegration, taking care of it.

Com. PATTERSON. That is right.

Mr. LE FORGEE. The taxes are paid on them. We are released from the possibility of accidents which happen to men in and about the plant. It is no longer our child.

Com. PATTERSON. That is right.

Mr. BURCHMORE. I think, if Mr. Le Forgee will agree with me, there was no other consideration for that lease than appears on the face of or within the terms of the lease. There was no promise of traffic, there was no promise of shipments, there was no promise that we will do something or anything of that sort. It is all in the terms of the document.

Com. PATTERSON. And, of course, you reserved the right to cancel the lease, either party might cancel the lease, practically without notice, on ten days' notice.

Mr. BURCHMORE. I think it says six months. I am not sure.

Mr. LE FORGEE. I think that is one of the things that Judge Brown and I clashed on, wasn't it?

The WITNESS. I think it was.

Com. PATTERSON. It says, as one of the conditions, this contract can be terminated by either of the parties thereto by giving to the other ten days' written notice of its intention to do so. That is practically no notice.

738 Mr. LE FORGEE. Well, pardon me; I don't understand that it is a ten-day notice, but I know of nothing about the length of time. A contract may be terminated on a demand. It would be on any length of time which the parties feel consistent in the sense of protecting their rights.

Com. PATTERSON. Oh, if they start tearing up your track or something like that, or making changes in the track, why, you could terminate the lease, as I read it.

Mr. LE FORGEE. Yes.

Com. PATTERSON. You could terminate it at once.

Mr. LE FORGEE. Yes; not only that, but the terms of that contract, after Judge Brown and I had considerable trouble getting together on its terms, were submitted to two judges of the United States District Court, and, as I understand, testimony was taken before an order was entered authorizing the Receivers to sign.

Com. PATTERSON. I guess that is all.

Mr. LOVERING. One more question, please.

Re-cross-examination by Mr. LOVERING:

Q. Have you a blueprint here of the tracks of the Staley Manufacturing Company which can be introduced in evidence?

A. Well, I introduced a number of blueprints at the June 1938 hearing.

Q. The point I have in mind, Mr. Burwell, is one showing
739 the tracks at the plant of the A. E. Staley Company and the various yards and tracks of the Wabash adjacent to it.

Mr. LOVERING. It is a map, Mr. Commissioner, similar to the one introduced as Exhibit 2 at the Chicago hearing. The reason that I have asked for another copy of that same blueprint is to enable subsequent witnesses to mark on that print, and I doubt whether they will be permitted to mark up the exhibit introduced at the Chicago hearing.

The WITNESS. I don't have any other.

Mr. BURCHMORE. I think we have one we can give you in a few minutes.

Mr. LOVERING. That is what we want.

Com. PATTERSON. Well, we don't need that on the record.

Mr. LOVERING. I would like to have it introduced as an exhibit because I would like to have some subsequent witnesses mark it.

Mr. BURCHMORE. You can introduce it with your witness.

Mr. LOVERING. I have no witness outside of Mr. Burwell who is qualified to introduce that print.

Mr. BURCHMORE. Well, if you get it from us, it is qualified, as it is in response to the request, but you will have to wait until we get it out.

Mr. LOVERING. No hurry on it; I just want to make that request, Mr. Commissioner.

Mr. BURCHMORE. You will have it in just a few minutes.

740 Mr. LOVERING. Have the record show that there will be a blue print introduced by Mr. Burwell.

Mr. BURCHMORE. No; we will not introduce it; we will give it to you so you can.

Mr. LOVERING. But I would like to have Mr. Burwell identify it.

Mr. BURCHMORE. I don't think he needs to when we furnish it to you.

Com. PATTERSON. What are you going to show by this blueprint?

Mr. LOVERING. Well, I have some witnesses coming, and I would like to have them put some marks on the print showing the track numbers and information of that kind.

Com. PATTERSON. Well, give the print to your witness and let him mark it up and then let him introduce it with the marks on it. Is there any more cross-examination?

Mr. LOVERING. I have no more.

Com. PATTERSON. Are you through?

Mr. BURCHMORE. With the reservation, yes.

(Witness excused.)

Mr. LE FORGEE. Have you another witness?

Mr. BURCHMORE. No; not until we find out the crime we have committed.

Com. PATTERSON. All right, you may go ahead, Mr. Lovering. Would you rather go to lunch now and then come back early?

741 Mr. LOVERING. I think it would be better to start at two o'clock.

Com. PATTERSON. Well, now, this two o'clock business, that is not going over. It is fifteen minutes to twelve. Now, can you be ready at one o'clock?

Mr. LOVERING. One o'clock.

Mr. STRASSER. Mr. Commissioner, the shipper that I mentioned yesterday or the day before, is here, and would like to put in a little testimony. It will take about five minutes, I imagine. May he be heard now?

Com. PATTERSON. Yes, put him on now.

Mr. STRASSER. Mr. Sutton, will you please take that stand?

E. GUY SUTTON, was sworn and testified at follows:

Direct examination by Mr. STRASSER:

Q. Please state your name.

A. E. Guy Sutton.

Q. Where do you reside?

A. Vice president of the Neal Gravel Company, Mattoon, Illinois.

Q. How long have you been connected with the Neal Gravel Company?

A. I have been connected with the Neal Gravel Company and its immediate successor for about 36 years.

Q. And you are in charge of all their traffic matters?

A. I am.

Q. Where are the plants of the Neal Gravel Company on
742 the Wabash located; plant or plants?

A. At Attica, Indiana.

Q. Just the one?

A. Just the one.

Q. And where is Attica located with respect to the Illinois eastern boundary line?

A. It is about 22 miles from the Illinois state line, Indiana-Illinois state line.

Q. And what is the distince from Attica to Decatur, approximately?

A. 99 miles.

Q. At that plant you produce sand and gravel for building purposes?

A. We do.

Q. And do you know whether or not that is the most important sand and gravel producing point on the Wabash Railway?

A. I think that it is.

Q. Is it the only plant that produces those materials that will qualify for Illinois construction work?

A. That is true.

Q. That is, cement work?

A. That is true.

Q. Is your company interested in having open to it the markets at points in Illinois, like Decatur, Champaign, and so forth?

A. 90 percent of our commercial shipments are destined
743 to Illinois.

Q. Now, does the Staley Manufacturing Company from time to time have rather extensive building projects?

A. They do.

Q. In the enlargement and development of their plant?

A. That is correct.

Q. And what can you say as to the quantities of sand and gravel that are required for such construction, are they large or small?

A. They are large quantities, varying from year to year.

Q. Have you had occasion to consider the effect on your company of getting to market your materials for such construction, on account of this terminal spotting charge of $2.50, which is the subject of this proceeding?

A. That charge on the average loading of 50 tons to the car amounts to 5 cents a ton. Jobs are sold and lost on as low as 1 cent a ton difference in price.

Q. So that would you consider that 5 cents a ton a very serious handicap in your effort to complete with other producers of those commodities?

A. That is correct, because the materials are highly competitive.

Q. From what points in Illinois does your chief competition come?

A. From the Pekin and Peoria district, and from Lincoln, Illinois. There are also crushed-stone plants located at Le-
744 high and East St. Louis.

Q. Well, the movement from all of those plants would be over intrastate routes to Decatur?

A. That is correct, they are all purely intrastate movements.

Q. Do you have any direct competition that you encounter here?

A. We do. There is a sand plant located, I believe, within the corporate limits of Decatur; if not, it is very close to it.

Q. Is there anything else you wish to add?

A. Except to call attention to the fact that the imposition or assessment of this charge of $2.50 per car on interstate shipments certainly constitutes a condition of undue preference in favor of Illinois shippers and of undue prejudice so far as the interstate shipper is concerned. It creates a condition that is highly discriminatory.

Mr. STRASSER. That is all.

Com. PATTERSON. Cross examine? (No response.)

(Witness excused.)

Com. PATTERSON. We will take a recess until 1:15. I think that will give us time enough for lunch.

(At 12:05 o'clock p. m., a recess was taken until 1:15 o'clock p. m.)

745 AFTERNOON SESSION

The hearing was resumed pursuant to recess.

1:15 o'clock p. m.

Com. PATTERSON. Come to order please.

Mr. LOVERING. Mr. Daggett.

A. L. DAGGETT resumed the stand and testified further as follows:

Direct examination by Mr. LOVERING:

Q. Do you have the Staley loads in and out, for the calendar years 1937, 1938, and 1939, for the B. & O.?

A. Yes, sir.

Q. Will you give them to us, please?

A. I will give you the information for the five-year period, which is as long as I have prepared it.

Q. All right.

A. For the year 1935, in-bound 1592, out-bound 2983, total 4575; for the year 1936, in-bound 2712, out-bound 5042, total 7754; 1937, in-bound 2163; out-bound 3653, total 5816; 1938, in-bound 1998, out-bound 4531, total 6529; 1939, in-bound 2189, out-bound 5470, total 7659.

Mr. LOVERING. That is all I have, Mr. Commissioner. I just want to get those figures in the record.

Com. PATTERSON. I beg your pardon?

Mr. LOVERING. That is all I have, I just want to get those figures in the record.

Com. PATTERSON. Any cross-examination.

746 Mr. BURCHMORE. Just one moment. That is all, no questions.

(Witness excused.)

Mr. LOVERING. Mr. Snell.

Z. C. SNELL was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Will you please give us your name and occupation?

A. Z. C. Snell, freight agent, Illinois Central Railroad Company, Chicago.

Q. Do you have figures showing the Staley records in-bound and out-bound by your railroad during the years 1935 to 1939, inclusive?

A. Yes, sir; I have them.

Q. Are those for the calendar years?

A. Yes, sir.

Q. Will you please give them?

A. All right; 1935, carloads out-bound 2558, in-bound 4491, total 6979; 1936, carloads out 4372, carloads in 7469, total 11,841; 1937, carloads out, 3152, in 5290 total 8442; 1938, carloads out 4152, carloads in 4813, total 8965; 1939, carloads out 4886, carloads in 6352, total 11,230.

Mr. LOVERING. I have nothing else Mr. Commissioner.

Mr. BURCHMORE. Just a moment. All right, no questions.

747 Com. PATTERSON. That is all.

(Witness excused.)

Mr. LOVERING. Mr. Wall.

C. C. WALL was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Mr. Wall, will you please give your name and occupation?

A. C. C. Wall, assistant director of the Bureau of Service of the Interstate Commerce Commission.

Q. How long have you been in the employ of the Bureau of Service?

A. Well, it is well on to eighteen years.

Q. What was the nature of your work prior to becoming associated with the Bureau of Service?

Mr. BURCHMORE. Mr. Commissioner, I would suggest, unless some special reason occurs making it necessary, that we be permitted to stipulate that until the question is raised it is implied that the witness has those qualifications that entitles him to speak of these matters. We will raise the question if we have one.

Com. PATTERSON. All right, unless there is an objection we will consider him qualified.

Mr. BURCHMORE. I don't object to his qualifying him, but——

Mr. LOVERING. It will shorten the procedure a little bit.

748 By Mr. LOVERING:

Q. Mr. Wall, in the course of your duties were you directed by the Commission to make an investigation or check into the operations, operating practices, at Decatur in connection with moving cars in and out of the plant of the Staley Manufacturing Company?

A. That is true, I was directed by my superiors to check the operations at the Staley plant at Decatur and report back as to what we might find, with a view of for someone else to determine how that checked out with what had been done before and what had been a matter of record, and to determine such changes that might have taken place between the time of the previous hearing and the time of my coming to Decatur.

Q. Were your instructions of a general nature or were they a mixture of general and specific?

A. Well, it was a mixture of general and specific. They told me the purpose of the work that I was to perform here but they left the details for me to work out, as to how I should proceed to get it.

Q. Will you please state what you did in order to carry out your instructions as received by you?

A. Well, my first job was to get somebody to—a team together to come down here with me to make this check. I selected three service agents from our field force and the team here was four and no more. I had set a time of ten days, no longer than that,
to make the check. As a matter of fact, had it worked out
749 according to schedule, we would have been through in nine.
The purpose of the investigation was explained to me before I left Washington in this manner: It was felt by the Commission that the operations were not completely described at the Chicago hearing. I don't know anything about what went on before last—the latter part of September. As a matter of fact, I never have

read the record of the first proceeding. I did not read the record of the Chicago hearing until after I had left Washington.

My plan was and my instructions were to see whether or not we could determine just what was going on here, and, if possible, that an agreed statement of facts could be obtained; that then this be submitted to the Commission and would be further taken up with the attorneys in the case to see whether or not these facts could be stipulated in the last record as of the Chicago hearing. It was—well, to make it plain, this check was not to get information for a further hearing, it was to avoid one.

Mr. LE FORGEE. May it please the Commission, I submit that the purpose of this witness' testimony seems to me for him to describe what he saw and what he did and that the ultimate conclusions that he drew from the inspiration which caused him to act is not a thing which would be controlling upon the Commission, but, if he saw something out there, let him describe and tell it.

750 Com. PATTERSON. I think that is true; so far as his instructions are concerned he can omit the rest of that.

Mr. LE FORGEE. A long detailed explanation of the moving spirit of why he was here is wholly immaterial and not——

Com. PATTERSON. I think it is immaterial.

Mr. LE FORGEE. Let him tell what he saw.

By Mr. LOVERING:

Q. After you arrived here at Decatur, Mr. Wall, and had a chance to examine the plant of the Staley Manufacturing Company, did you in the course of your duties observe the handling of the cars in and around that plant?

A. Well, my first move was to register in with the ranking officials of the Wabash Railroad, who was Mr. Haney, the then superintendent——

Mr. LE FORGEE. I submit that that is utterly immaterial. It is a question of just what he, as a layman, saw out there. The Commission will determine the force and effect of it from whatever inspirations——

Com. PATTERSON. I don't see that that question is necessary. What do you expect to prove by it?

Mr. LOVERING. Well, it is simply furnishing the background, so to speak, for the picture which I am going to ask him to describe.

Com. PATTERSON. Well, let's start with the picture.

Mr. LOVERING. All right.

Mr. LE FORGEE. That is right.

751 Mr. BURCHMORE. I want to interpose this, Mr. Commissioner. I understood that Mr. Wall made a report and I asked for that report and I was refused the report. We would

like to have seen it and we would still like to see it. I want to make that point to you. I was informed by the secretary of the Commission that it had made a report.

The WITNESS. May I make a statement, Mr. Commissioner?

Com. PATTERSON. Off the record.

(There was a discussion outside the record.)

By Mr. LOVERING:

Q. Mr. Wall, do you recall the approximate date when you first went into the plant?

A. It was in the latter part of September, last year, perhaps the last week, last year.

Q. Did you examine the type of building lay-out?

A. I did.

Q. Will you please describe it as you saw it?

A. Our first visit into the yard to inspect the facilities after we had left the Staley Company office was up at the east end of the yard, in the vicinity of elevator C, which is indicated on an exhibit previously introduced as Exhibit No. 2, I believe, in this proceeding. We went over the tracks and it was explained to us the operation at the elevator, also the handling of cars through the Burwell Yard, which is immediately north of these elevator tracks.

These tracks consist of six in number, numbered from 1 to
752 6, north to south, and my recollection is that they held approximately—their working capacity was about 45 or 48 cars to near 60 cars. The outside tracks are the shorter.

Then we went over to the elevator itself. There were four tracks going through a shed at elevator C, and we observed that the operation of the cars delivered to this elevator was from the west, the movement and flow was towards the east. I discovered that that was opposite of what the Chicago record indicated. The flow, it seemed to indicate, was from the east to west.

By Com. PATTERSON:

Q. Just what was the date of this visit?

A. It was in the last week, I believe, Mr. Commissioner, of September 1939. I can't give you the exact date without referring to my notebook.

Q. Well, you better refer to your notebook. We would like to get this specific.

A. I haven't got them here with me but I can supply that information on the exact date later.

Q. All right.

A. We observed these cars placed on these four tracks going through to the elevator shed, where they could be handled by a car puller from the west towards an easterly direction through

the shed. Over these tracks there were—or under these tracks there were pits—I think that there is two cars can be placed over
753 the pits on each of the tracks. Then the doors were opened and the grain doors were kicked out by a mechanical device and such grain as would fall out rolled down into the pits and the balance was scraped out by the mechanical scoop or scraper from the inside.

The car pullers would pull the next two cars down and this process would be repeated as often as the supply west of the elevator permitted. When this supply run out new cars were placed by the Wabash Railroad on these four tracks and that operation was repeated throughout the day.

Q. How many cars could be handled with the pullers before another spot was necessary?

A. I will have to refresh my memory a little bit on that. The usual operating capacity of these pullers on these tracks was determined at about twenty cars. Now, of course, that would be cut down by—if there were too many empty cars ahead so as to load up the car pullers beyond its capacity to pull, why, you could not pull twenty loads from the north end unless these empties were taken off by a switch engine. But I think it was determined that these puller capacities were about twenty cars on each track. Those pullers were placed in there in 1927, I think.

By Mr. BURCHMORE:

Q. 1927 or 1937?

A. 1927, at elevator C, is my record.

Q. I only didn't hear, that was all.

A. We then passed on up through the yards to the main—
754 what might be determined as the main part of the Staley plant. We had to pass through gates at a fence which enclosed this part of the plant, which is situated at its easterly end, located on the map, Exhibit 2, in what would be—at what would be near 24th Street, along the edge of 24th Street or an extension of that street. There were two gates through which tracks passed going into the main part of the plant, and these gates were situated at the points upon Exhibit 2 which would be indicated by the intersection of the lines showing these two tracks entering across what is designated as a private drive, about the middle of Exhibit 2.

These gates were kept closed and locked. The fence surrounding the property was perhaps eight feet tall and it was surrounded in addition to that with a barbed wire on top. It was necessary for a switchman, in passing through this gate, to unlock that gate, then after the train or engine passed through, to lock it again. I observed that these gates were fitted with standard switch lights, which could be lighted at night showing their closed position.

After that we passed on up through the main part of the plant. We went up one track and down the other. It was explained to us the different operations at the different buildings and what was handled from the different buildings. Then we finally went down to the extreme west end of the yard to what they
755 termed their scale house. This is indicated on Exhibit 2 by the figure just above the letter "A" in the words "A. E. Staley Manufacturing Company," the initial "A," the first initial on Exhibit 2. We observed the operations at this point, as to what they did with loaded cars in this end of the plant, how they got down there, what switches were necessary to move them from spot to spot.

And that set the background in order that we could follow through the remaining days that I was here to determine just what switching operation was necessary in the plant to handle the Staley business, and we did follow through along those lines.

Going back to the Burwell Yard, we determined that these tracks from 1 to 6 were assigned for special business. Track No. 1 was their catch-all track.

By Com. PATTERSON:

Q. Was a what?

A. Their catch-all track. That was for their miscellaneous business. They had delivered on that track, which was taken from the Staley yards, such commodities as coal and their empty cars, boxes, barrels, paper, and empty tank cars; it was all delivered on No. 1.

By Mr. LOVERING:

Q. Pardon me, you said taken from the plant, I believe.

A. Taken from the yard. If I said plant, that should be corrected—taken from the classification yard of the Wabash and placed on No. 1 Burwell Yard, to be later placed where necessary within the plant.

756 By Com. PATTERSON:

Q. Did that stuff all come over at one time or did they bring it over piecemeal?

A. No, I observed that track being switched numbers of times during the day while I was here, both cars taken away from the track and cars that were placed on the track. The ordinary procedure would be to feed this track from the east to west and take the cars away for placing from the west end of it. Of course, that wasn't a hard and fast rule, but that was the ordinary procedure.

Track No. 2, as I recall it now, was a track for cars that were to ultimately go to elevator C. I haven't my notes here but each of the tracks were assigned for some particular traffic or given

some particular assigning use. These catch-all cars were on No. 1, as I have stated; No. 2 was for another delivery to one of the elevators; No. 3 likewise for another one of the elevators; 4 for another one of the elevators; No. 5 was an overflow, and No. 6 was the run-around track. That is the southernmost track on this map.

By Mr. LOVERING:

Q. You don't mean, Mr. Wall, do you, the southernmost track on the map?

A. The southernmost track in the Burwell Yard on the map, Exhibit 2.

By Mr. BURCHMORE:

Q. Colored in red on the map, Exhibit 2.

A. I specified the Burwell Yard, which is colored in red, that is true. Now, we later observed the movement of the cars
757 off of these individual tracks. As needed at elevator C, these cars ordinarily would be taken off the west end of the Burwell Yard track assigned to hold that business and fed into elevator C from the west end.

The coal was drilled out or separated from all the rest of the commodities on No. 1, and that would be taken to the designated unloading track for final unloading. That designated unloading point might have been either of two locations and on either of four different tracks, two at each location. The coal dock has two tracks. It was explained that those were designated as tracks 9–A, which is the northernmost track, and 10–A, which is the southernmost track. Track 10–A had a pit below it and cars would be placed on this track, the coal dumped into this pit, and it would be conveyed under the track and through some underground passage, finally over to the boilerhouse.

It was necessary for the Wabash to make a further classification of these coal cars so that they could only have drop-bottom cars to go on the track 10–A, which had the pit. The other flat-bottom cars were saved for the track 9–A and the coal was picked up from these cars in a clam shell, was dropped over into a bin, and I believe finally went underground and was conveyed over to the boilerhouse along with the coal that went from the drop-bottom cars.

I might explain for identification that this coal dock
758 is located just above the letters "IAC," which is still farther up above the letter "t" in the word "Staley" on Exhibit No. 2. Other coal was loaded in their coal-storage piles. These tracks, two in number, were known as north coal storage and south coal storage, and are situated, the last of the most northerly tracks a little bit to the left and above the letter "A" in the word "A. E.

Staley." They tried to make a segregation of this coal by using the flat-bottom cars also to unload in this storage, because they could unload better with their clam shells operated by two locomotive trains from a flat bottom than they could with a battleship-type car; at the same time they could save this battleship-type car where they could dump it in the pit.

Now, there was another movement of coal from the storage to a track which was told to me was designated as the Germ Meal spur. This track is located just south of a building that was designated as structure No. 9—No. 9 on Exhibit 2. From the best source of information that I could obtain this was a constant movement of coal from the storage over to this Germ Meal spur, and the amount of coal used here was about two cars in three days. There were two regular cars assigned for this shuttle service between the stock pile and this spur. Those had been assigned by the Wabash Railway to the Staley Company; and when one car was being unloaded another car was being loaded at the stock pile, and, as soon as the first car had
759 been finally emptied, the other car took its place.

I might say that from the best source of information I could obtain, that there was perhaps more tons of coal first unloaded in the stock pile and then later moved to the power house than was delivered to the power house direct from track 4 or from the car. At least that was true during the period when we were here, when they were storing a considerable amount of coal and there were tremendous piles of it along those coal storage tracks.

Another kind of movement from Burwell No. 1—just before I leave that I would like to state this: That in order to keep those two locomotive trains which operated those clam shells going, it was necessary to give them more or less frequent service, and, of course, they had to have it when they wanted it. They unloaded a car of coal pretty fast and they had to have quick service and frequent service in order to keep the trains going.

Mr. LE FORGEE. Well, I object to the argument.

Com. PATTERSON. You can cross examine about that.

Mr. LE FORGEE. If your Honor please, I have no objection to him telling what he saw, but what he felt is a matter of argument, just isn't anything within the province of the witness.

The WITNESS. That was my observation.

Mr. LE FORGEE. You are not stating it as you observed.

760 The WITNESS. I will restate it then. I would say it was necessary to have——

Mr. LE FORGEE. "Necessary," that is a reasoning process, not a matter of observance.

Mr. BURCHMORE. Mr. Commissioner, while the witness says "From the best source of information I could obtain," would it be proper to suggest that he name the source? Instead of it being the best source, let him tell where he found it out. Just say Mr. Jones or somebody else.

The WITNESS. After I saw——

Mr. BURCHMORE. Don't argue. I am suggesting that from here on.

Com. PATTERSON. That is all right.

The WITNESS. Do you want me to mention that now?

Com. PATTERSON. Go ahead with your story.

The WITNESS. A further movement from Burwell No. 1 would be a movement such as empty tank cars. These empty tank cars, as they were needed, were ordered from the Burwell Yard to whatever designated point as shown on the switch list, and as they were needed they were also drilled out from this miscellaneous kind of freight on No. 1. The ordinary movement of the tank cars at that time, the empty tank cars, would be to proceed from Burwell No. 1 at the east end of the yard to west end of the yard, using either what was termed the north lead or the south lead. These tracks are designated on Exhibit 2 and
761 the north lead track is the northernmost track in this Y shaped indication on the map at about the middle of Exhibit 1, and the south lead would be the southernmost track.

By Mr. LOVERING:

Q. Pardon me, you mean Exhibit 2, don't you?

A. No. 2. The engine working the east end of the yard would bring these tank cars along with coal or anything else they may have had for the west end and they would leave it in some available spot at the east end of the yard.

By Mr. BURCHMORE:

Q. At the east end? You have your finger on the west end.

A. At the west end of the yard. Thank you. It was there picked up by the west end engine and they would perform the—ordinarily the most of the switching service in the main part of the Staley plant west of elevator A. The east end engine handled the services ordinarily of the elevator C, the refinery, and elevator A. Of course, this wasn't a hard and fast rule and they were interchanged and did do other work, but that was the general set-up. The Staley Manufacturing Company required that these empty tank cars——

Mr. LE FORGEE. Now, I object to the use of that word "required".

The WITNESS. I wish to correct that. These empty tank cars were required to be brought from the Burwell Yard and placed

on a cleaning track in the Staley plant, which was described to me as 13–A. There was also another track along
762 which cars were sometimes—empty tank cars were placed, 14–A.

Under track 13–A and also under track 14–A there was also a pit. These cars would be steamed and cleaned on those tracks. The water from the cleaning process would come down through the tank and empty into this pit beneath the track. I made inquiry as to what became of the water in there and was informed it went back through the plant and this cleaning water or sweet water, as they call it, was refused. There was a certain amount of reclaimed products from this cleaning water.

However, before the car was placed on this cleaning track, it went over the scale. The scale is situated just north, on Exhibit 2, of the letter "A" in the word "A. E. Staley." When they would pick this empty tank car, or any number of them, up from one of these leads, usually the south lead, in order to place it on this cleaning track, which is a stub track, they had to run around it with the engine sometimes between the time it was picked up on this track and the time they would actually spot it. It was a stub track and they had to get out of its way.

After the tank car was cleaned it was then moved back over the scale and reweighed again. After this second light weight was obtained, the car would be placed at whatever designated point the yard clerk would give the switchman on instructions from the Staley Company for loading it. I checked some of the loads on these reweights and I found that some of these tank cars, having made as many as three trips in and out of the
763 Staley plant, were light weighed on each trip twice in the same month. That is six light weights in thirty days, and, of course, three outbound loading weights on each tank car.

We also observed the movement of beans from the Staley yard. There was quite a number of beans coming in at that time. We observed the movement of these beans a little bit further by checking what happened to the cars from the time they were placed on what was known as the Federal grain inspection track. This track on No. 2 is situated just north of the Burwell Yard and lies between the Burwell Yard and the Wabash classification yard.

After these cars had been placed on the inspection track, if they arrived via the Wabash Railroad, they were inspected by inspectors of both the Federal Grain Inspection Bureau and a representative of the Staley Company. I talked to these gentlemen and they told me, at least, that is who they were working for.

I followed through to find out what happened to the cars after they were inspected and I found that on the basis of the inspection report and after this report they were ordered to either the elevator C, which is designated on Exhibit 2, or elevator B, also designated on Exhibit 2 as No. 22. If the beans went into the storage at elevator C—wait a minute, I have got that wrong. That was grain. If the beans went to elevator B, which
764 was the bean elevator, these cars also were scaled before they were placed.

By Com. PATTERSON:

Q. You mean they were weighed?

A. They were weighed; yes, sir. They were weighed over the track scale at the scale house. This also entailed a run around of the engine some place between the time they would pick them up, after they would be set down by the east end engine, and before they were placed at elevator B, because these cars are fed in from east to west. The engine had to get out of the road. There is also a puller at the bean elevator, but there is no scale. There is a scale at elevator C, a plant scale, but there is no plant scale at the bean elevator.

After the cars had been fed through and unloaded at the bean elevator, they were taken off as empties from the west end. These tracks although they show on Exhibit 2, both at elevator C and elevator B, as continuous tracks, for operating reasons they are what is known in railroad parlance as being cut in the middle. That is, the engine can't pass in this operation in the middle, so that they have to feed this bean elevator track from the east end and take the empties away from the west end. The engine can't pass straight through.

The grain doors are loaded into those bean cars handled at elevator B; then the empty car again passes over the track scale and a light weight is taken of that empty car. After it is light weighed the engine would take the car over on one of
765 those south tracks—I believe they call it 11-B—and the grain doors were removed entirely from the cars. If they didn't want to use them any more, or if the Staley Company had expressed the desire to use that car for an out-bound load, the excess grain doors would be taken out of the car and just a few of them necessary for the bulk loading would be left in the car.

By Com. PATTERSON:

Q. Where does this car come from, car of grain, from the grain inspection track in the classification yard or from the Burwell Yard?

A. It originally came from the classification yard to the Burwell Yard and then to the grain elevator, and then, when it was made empty, then it came from elevator B, which is the bean elevator——

Q. It starts at the classification yard?

A. That is right.

Q. And goes over to the Burwell Yard?

A. That is right.

Q. Then goes over to the scales?

A. Over to the scales.

Q. And then goes to the elevator?

A. And then goes to the elevator.

Mr. BURCHMORE. What does he mean by the "Burwell Yard"? I want to get that straight.

Com. PATTERSON. Those are the six tracks that have been
766 leased to the Wabash Railroad by the Staley Company.

By Mr. LOVERING:

Q. Mr. Wall, are you speaking now of grain that came in via the Wabash or grain that came in from connections? I think you started your movement from Wabash grain. If that is the case, the Wabash grain comes off of what track?

A. I can clarify that in this manner: That the movement of grain is identical whether it comes from a connection at Decatur or whether it comes via the Wabash, with the exception that the connecting line cars do not have to first go to the Federal grain inspection track. Otherwise the movements are identical.

If this car, after it had been made empty at the bean elevator, was desired for out-bound loading, they would move the car over to this track—as I say, I think I am correct that it was 11-B—where the grain doors were either entirely removed, or, if they wanted to use it for bulk loading or they wanted a lesser number of grain doors than what had been required to move the beans, they would take the excess number of grain doors out.

Q. Mr. Wall, one question right there, if I may interrupt. When that car is taken away, those bean cars have been unloaded and taken away from the elevator, is there any intermediate stopping point between there and track 11-B? You said, I believe, in your last statement, that they went from the unloading track, elevator B, direct to track 11-B?

A. No, they are scaled, they are weighed on the scale,
767 with the grain doors in the empty cars.

Q. Are they weighed both loaded and light?

A. The beans—the cars as loaded with the load of beans in it before it is placed at the bean elevator, and it is again weighed light after it comes away from the bean elevator, with the grain doors in the car. Now, then, if they wanted to use that car for bulk loading, you would take less grain doors.

Mr. LE FORGEE. Well, I object to the argument.

The WITNESS. All right. Some of these cars which were required for out-bound loading, they would take the cars over to this 11-B track—and I am not quite sure, I think I am, as to that number—where a portion of the grain doors were removed. Then the car was again run over the scale and weighed light with the lesser number of grain doors in, after which it may have been placed at a unit in the Staley plant for loading bulk feed, for example; but that car had received two light weights between the time it had been unloaded at the bean elevator and the time it had been placed for the out-bound load.

Mr. LE FORGEE. If I may be pardoned for just a moment; will you read that answer, the last paragraph.

(Answer read as requested.)

The WITNESS. After the car had received its out-bound bulk load, it would again be weighed on the scale before it was moved out with its new loads. I might state that I saw no empty cars light weighed which had been used for out-bound loading
768 unless this out-bound load was a bulk commodity. No package stuff which was loaded in these out-bound cars were light weighed or no—package loading in such cars were not light weighed.

Now, the movement of cars for the oil refinery was also from Burwell track No. 1 and ordinarily went to the scale, to the cleaning track, then back to the refinery where it received its load.

By Com. PATTERSON:

Q. How did it get to Burwell track No. 1, do you know?

A. It went to the Burwell track No. 1 from the Wabash classification yard.

By Mr. LOVERING:

Q. One more question, Mr. Wall. You said that the car moved, as I understood it, from the scale to the cleaning track. Where did you say it went next after leaving the cleaning track?

A. Will you read it, please.

(Question read.)

A. The box cars I was talking about before that were not light weighed, were cars that were loaded either with package or sack materials, which were loaded by the Staley Company.

By Mr. LE FORGEE:

Q. Well, without reading the statement, would you repeat the things you think you just said?

A. If you would tell me which one; I got from box cars to tank cars.

Q. I understood you to say package cars but apparently it
769 was tank cars you are talking about. You say that tank cars to the refinery go to the cleaning track and then to the refinery?

A. There were such movements.

Q. There were such movements?

A. That is right. I am only talking about what I saw.

Q. Do you mean to say that there was one such car or that that was the practice? I thought you were talking about the practice.

A. There were some cars to the refinery that did not go to the cleaning track, but there were two cars that did go to the cleaning track before they went to the refinery. Why that was I don't know.

Q. Only two did go to the cleaning track and all the rest did not?

A. I am only speaking of what I saw.

By Com. PATTERSON:

Q. Well, the Staley Company would have a record of all the cars that went to the cleaning track and those that didn't, wouldn't they?

Mr. LE FORGEE. We might and might not, but I think we might not discover two cars that did not. I might explain what I mean. In the first place I thought he said they all did.

The WITNESS. Answering your question, Mr. Commissioner, the Wabash Railway at least did not have any record of some of these tank movements.

By Com. PATTERSON:

Q. Who made the movement?

770 A. The Wabash switch crews.

Q. They kept no record of it?

A. Some of them they did and some of them they did not keep a record of the light weighing boxcars. I found no tankcar records that were not recorded with the exception of the caustic acid, which I will deal with a little later.

By Mr. LOVERING:

Q. I would still like to clear up one point there, Mr. Wall. I am not sure it is made quite clear. When one of those tank cars comes in light from the leased tracks out there, the first move, as I understand you, is to the scale for weighing?

A. You are speaking now of the movement after it leaves the Burwell Yard?

Q. That is an empty tank coming in. I believe you then said it went from the scale track to the cleaning track. What I am not clear on is the physical move after it leaves the cleaning track.

A. Then it goes back to the scale track if it is handled for a load of glucose or something else up here in the vicinity of 17 house. Not all of the cars that were handled at the refinery made this movement to the scale or to the cleaning track.

Q. Were all cars light weighed twice or more?

A. All of the cars that we observed that were loaded in the vicinity of 17 house were light weighed twice and load
771 weighed once.

By Com. PATTERSON:

Q. They weighed them before they steamed them out and then after they steamed them out?

A. After they steamed them out.

Q. And then after the car was loaded?

A. That is correct, Mr. Commissioner. In the movement from Burwell No. 1 would be caustic acid, in-bound loads. Upon inquiry I was informed that this caustic acid was used in some manner in their cleaning processes of these tank cars. I observed one car while I was there that had been moved in from the Burwell Yard to the refinery or the structure located on Exhibit 2 at designation 29. A part of this acid or caustic was used at the refinery. Then the part loads were switched from the refinery track over the south lead, over the scale where it was weighed; then the car was run around, that is, the engine was run around the car on the other end in order to get the engine in the right position to place it on the track which was described to me as being known as track 14–A, acid track. This track is a spur track located on Exhibit 2 immediately north of the letter "I" in the word "A. E. Staley."

By Mr. BURCHMORE:

Q. Over towards the west end of the plant?

A. It is in the—about the central portion of the west end of the plant. It is just south of the structure shown as 36.

By Mr. LOVERING:

Q. What building is it near?

A. It is south of 36 and north of 16. It is the most
772 southerly spur track shown in that location. I could find no record of the weighing of this acid car partly loaded between the move it made from the vicinity of the refinery to this acid track, although the car did pass over the scale and these scale weights were given to the Staley Company by the force in the scale house.

By Com. PATTERSON:

Q. Is this a scale that is owned and operated by the Staley Company?

A. On inquiry I was informed that the scale belonged to the Staley Company, that their weighmaster was a sworn and bonded weighmaster, and that they did have a weight agreement, that is, the Staley Company did have a weight agreement so that he could be so used. He gets his money, his pay, from the Staley Company.

By Mr. BURCHMORE:

Q. Could you give us the date and the car number of that car you are speaking about?

A. I think there can be an exhibit introduced later by another witness——

Q. You couldn't tell us now?

A. I can by referring to this exhibit; if you like, I will do that.

Mr. LOVERING. If that isn't covered elsewhere, we will furnish it. We have a record of it.

Mr. BURCHMORE. I would like the date and the car number before we come to cross-examine him.

773 The WITNESS. Well, I haven't got it here before me.

Mr. LOVERING. I think I can get that at recess.

Com. PATTERSON. Go ahead.

The WITNESS. The out-bound cars were placed at various tracks on which the manufactured products of the Staley Company were shipped. The method of first securing these out-bound cars during the period I was there was largely for the Staley car inspector to inspect empty cars which were made or had been unloaded in the Saley plant at one of the elevators. If, after this inspection, it met with the approval of the inspector, then proper inspections were given to the Wabash yard force and this car was placed for loading at the various loading points.

One of the commodities loaded is starch, at the starch house. We observed the movements—I might say that this is a pretty busy place and the movements in there are more or less rapid and are required often. It appeared that as soon as a car was loaded and sealed up by the Staley seal man, that this car would be removed from the track and another car placed in there for loading.

A number of cars of starch which had been so taken from the loading track and moved over into the east portion of the Wabash classification yard situated in the vicinity of—located north of the letter "A" in the word "A. E. Staley" and marked in red. Some of these cars had to be brought back to the plant for unloading. I wondered why this was and upon inquiry——

774 Mr. LE FORGEE. That I submit is immaterial, as to what he wondered.

The WITNESS. Well, at any rate, they were brought back for unloading after they had once been loaded. I made inquiries and was informed that the cars were unloaded in order to reprocess goods that did not meet certain requirements of the Staley people.

I did not quite have my notes in front of me on this Burwell Yard a while ago so that I could definitely state what cars had been assigned to receive certain loads to be later placed in the Staley plant. I can substitute that now and say that No. 1 was the catch-all or miscellaneous freight track and No. 2 was——

By Com. PATTERSON:

Q. Starting from the north?

A. Pardon?

Q. Starting from the north?

A. These are numbered from 1 to 6, north to south.

Q. All right.

A. No. 2 was assigned for cars which would eventually go to elevator A; No. 3 for cars eventually going to elevator B, and No. 4 to elevator C, and No. 5 was an overflow track and No. 6 was the run-around.

At elevator A there was a puller serving the south side, which was installed, I was told, sometime about 1910, and the estimated capacity of that—working capacity of that puller
775 was given as thirteen loads.

Elevator A also had a puller on the north side of the building but we were told that this was—had been unused for approximately a year and a half prior to the time we were there.

At elevator B there was a puller serving track 2–A. I might describe this for location as being the southernmost track situated north of the location indicated as No. 22 on Exhibit No. 2. The working capacity of this puller was designated to me as about nine loaded cars. This was installed some time about the middle of 1937.

Track 4–A also serving—I have handled this so much that my markings have got pretty badly damaged.

By Mr. LOVERING:

Q. What building is it near?

A. It is the track just north—or just south of building 48—also has a track puller established some time about the middle of 1937, I was informed, and has a working capacity of nine loads.

Elevator C has a battery of pullers serving tracks 1, 2, 3, and 4, and these are the tracks commencing at the northerly part of the location just north of elevator C and indicated on Exhibit 2 as passing through what is known as the receiving shed. The

capacity of that is about twenty—operating capacity, about twenty cars, twenty loaded cars, installed about 1927. Tracks Nos. 5, 6, and 7 at elevator C, which are the tracks located on
776 Exhibit 2 south of what is marked as "workhouse and drive" and pass through a shed indicated on this exhibit as the "sack shed." This also has a working capacity of about twenty loaded cars.

By Com. PATTERSON:

Q. Do locomotives go through those receiving shacks, the workhouse and the sack shed?

A. No, sir; it is an operating practice that all of those tracks were considered as cut out by the operation and in serving these tracks they serve them from either end and do not pass straight through.

Mr. BURCHMORE. May I have that question read?

(Qestion read.)

Com. PATTERSON. I will change that question.

By Com. PATTERSON:

Q. When you were there did you observe any engines going through those receiving sheds, the workhouse or the sack shed?

A. No, sir; they were very careful in placing cars, loaded cars, at the east end. As a matter of fact, they would never even couple on to those cars that were placed, they would go up close to them, set the brakes, and then put a block under the track so as to be sure these cars would not move any cars ahead of it and perhaps hurt somebody.

The feed elevator also has a puller serving the feed track. Its capacity is about ten loaded cars, working capacity, and it was installed about the middle of July 1937. The coal dock also has a track puller installed about 1931 and this has a
777 working capacity of only two or three loads on each of the tracks, 9–A or 10–A, the location of which on Exhibit No. 2 are previously described.

That was the background and general situation that we developed at Decatur, and, in order to support as the fact the various situations which I have described—and perhaps there might be a few which from memory I have overlooked—we selected examples and showed car initials and numbers that were handled in such and such a manner, and so forth, and these can and will be introduced by later witnesses.

By Mr. LOVERING:

Q. Now, Mr. Wall, while you were making this investigation, what did you find out as to how the instructions were handled, if any, which the switch foreman had to guide them in their work.

A. These switch foremen of the switch crews received from the Wabash yard clerk in the scale shanty——

By Com. PATTERSON:

Q. Which scale shanty?

A. That is all——

Q. Well, I know, but on whose property?

A. It is within the fence enclosed Staley property. From time to time they received instructions which were written down on various forms, either switch cards or copies of yard checks, which indicated to them what work was to be done. An inspection might not be specific, it might be something that would read like "switch coal dock" or "switch one track on the north" or

778 it might specify a particular car or a number of cars that were to be moved from on certain track to another track. There were other movements, as good many of them, that were performed without any of these instructions. It is my observation that in order to facilitate the service, to benefit no doubt both themselves and the Staley Company, that the switch foreman would contact the men in charge at these various units; if there were something to be done that he knew had to be done, he did not wait for the list but he want to work and did it.

Q. If he got out of work he went over to find out if there was anything to do?

A. I did not get that question.

Q. I say, if he got out of work he went over to find out if there was anything to do?

A. No, this would be in connection with work that might have developed before he got there.

Q. Then he did whatever additional work——

A. Additional work may have developed and he did that without any instruction or switch list; and there is a lot, a great deal of the moves within the plant that would occur that way, on which naturally there would be no switch list, together with other movements that would be routine. There was never, for example, any instruction for bringing beans from the Burwell Yard down to the west end of the yard which were eventually to go to the bean elevator.

779 The last thing that the man working in the east end of the yard would do before he quit work at 3:30 would be to bring a bunch of stuff from the east end of the yard down to the west end of the yard so the west end man could go ahead and handle it from there. I might explain, I don't think I covered this feature that there were four engines working in this plant, as a general rule, during the time we were there.

Q. What do you mean by four engines, that they were working four shifts?

A. There was one engine that was working three shifts at the east end, that is, one locomotive that was working three shifts at the east end and only traded off when it had to go to the roundhouse. Then there was one eight-hour shift that was working at the east end of the plant.

Q. Then you mean, rather than four engines, they were working four eight hour shifts?

A. I was using railroad parlance. That is correct, I did not mean four locomotives, I meant four engine shifts.

Q. All right.

By Mr. LOVERING:

Q. Mr. Wall, you spoke of four tracks there at the unloading shed at elevator C. One minor point there I would like to correct, if possible. From which way are those cars fed, from west to east or east to west, when they are placed on the track loaded?

780 A. When they are placed at elevator C they are fed for unloading from the west end of the receiving shed and pass through the receiving shed towards the east, and the empty car is taken off of the east end of this track after the engine approaches the empty cars from the east going west.

Q. You spoke of those tracks having a working capacity of 46 to 48 cars; how does that compare with their actual track capacity—actual car capacity, I beg your pardon?

A. Oh, if you wanted to store cars, of course, these tracks would accommodate a great many more cars, but I am speaking in terms of working capacity. Naturally, the capacity of these tracks, so far as the handling of loaded business is concerned, is limited to just that portion of these four tracks which is situated west of the receiving shed. The track situated east of this receiving shed can only be used to accommodate the empty cars, after they have been unloaded.

Q. Did you personally observe the handling of grain loads into this track for the purpose of keeping it filled up or the placing of cars on that track, at all?

A. Oh, yes; I rode the engines with the crews that worked in this end and saw what they did.

By Com. PATTERSON:

Q. Worked in this end, what do you mean by that?

A. I beg your pardon.

Q. You say you worked in this end, did you say?

A. I think I said I rode the engine.

781 Com. PATTERSON. (to the Reporter). Read that paragraph.

(Answer read.)

By Com. PATTERSON:

Q. What do you mean by "this end"?
A. In the east end or in the vicinity of elevator C.

By Mr. LOVERING:

Q. Did you see the crew serving the elevator wait until the cars had all been unloaded?

A. Oh, no; they never waited at elevator C with the engine until the cars were unloaded. They would place these loaded cars on the tracks, on each of the four tracks west of the receiving shed; then they would go away and leave the cars. It wasn't necessary to go back there again until it was required to place additional loads. They would have to come in as required and as these empties accumulated on the west end of these same tracks, that is, the tracks west of the receiving shed, and take the empties off. These empties were taken back into the Wabash classification yards.

Q. The empties taken off of which end of the track?

A. The empties were taken of the east end of the track serving the receiving shed.

Q. Did you ride the engine for one entire shift or one entire trick on any one occasion?

A. Oh, I would not want to say that I was on the engine or even with the crew every minute. I had to stop to eat, of course, but I did——

By Com. PATTERSON:

782 Q. The crew had to stop to eat, too, didn't they?

A. Beg your pardon?

Q. The crew stopped to eat also, didn't they?

A. Yes; but they doubled up on us. They had three crews to work against our one.

By Mr. LOVERING:

Q. You spoke about going from the last tracks out there in the east end of the property through a fence. I don't believe you mentioned the construction of that fence. I would like to ask you whether that is wood or steel or wire?

A. This fence, which completely surrounds——

Mr. LE FORGEE. He has described that once.

Com. PATTERSON. Yes; does that have any significance?

Mr. LOVERING. The only point there at all is, it is a wire fence.

Com. PATTERSON. Well, it has no significance. They have a fence there and they lock themselves in and they lock themselves out.

Mr. BURCHMORE. Yes, and there is barbed wire to catch your pants as you go over. It is about eight feet tall, too, isn't it?

The WITNESS. I believe there is a feature that I overlooked that has a significance, however, with respect to that fence. There is also gates at the——

Mr. LE FORGEE. I am not aware of any question that has been asked the witness in relation to that.

783 Com. PATTERSON. Well, let the witness make a statement.

Mr. LE FORGEE. All right.

The WITNESS. I have described already the gates at the east end of the enclosed—fence enclosed property, but there are also gates situated at the west end of the Staley plant. The engines serving the east end of the Staley plant, if they have—after they come to work they first enter the property at the west end. During the time we were there, when they come on to their work, their job, they secured a key in order to unlock the locks which were on these fence gates. Each time that the engine passed through the gate, one of the switchmen closed the gate and again locked it. They would go away and leave it then and they would have to come back and unlock it again as often as they might pass through.

That was true at the west end—or the east end. At the west end there was one of the gates that—it was tended by a Staley watchman. There were two other gates located in the vicinity of the property line separating the Wabash yards from the Staley property in the proximity just south of what would be a continuation of Charles Street if that street passed across the tracks. These gates I have seen the switchmen lock and unlock; it is just a little bit too far, maybe, away from where the Staley watchman was on duty.

By Mr. LOVERING:

Q. In connection with the coal dock, Mr. Wall, you spoke
784 about track 9–A being used by flat-bottom cars and track 10–A by hoppers. Is it true that a flat-bottom car of the dumping type would have to be placed on 9–A necessarily?

A. Well, any self-clearing car of course, could be unloaded and it no doubt would be unloaded on 10–A.

Q. In other words, you would not restrict cars on 9–A to all flat-bottoms?

A. A self-clearing car is what I meant in a broad sense, not necessarily a hopper type car.

Q. What about coal being taken from the storage pile to the drier; do you know whether those loads of coal were weighed? Did you see the movement of those cars?

A. Those cars, the coal, are weighed. The car is not light weighed but the load, after it is once picked up, does pass over the scale and the weight is recorded.

Q. In connection with the tank cars, how many cars can they clean at a time?

A. Well, let's see——

Q. Put it this way: How many cars did you see being cleaned at any one time?

A. I think they can clean two cars on each of tracks 13-A and 14-A. I am not positive but I think the ordinary practice is two cars on each track at a time.

Q. How many did you actually see being cleaned at any one time?

A. I have seen two there on those tracks.

Q. Do you know how long that takes?

785 A. No; I could not tell you that.

By Com. PATTERSON:

Q. Did the engine wait for them to clean them?

A. No, sir.

Q. He spotted them there and went away?

A. He spotted them there and went away.

By Mr. LOVERING:

Q. With reference to the light weighing of some of the tank cars to which you referred, would both of those light weights be recorded in the weight record book, or did you examine that book?

A. I would rather that would be answered by another service agent who went into the records of what was recorded into the weight book more thoroughly than I did.

Q. With reference to this car of caustic that you spoke of as not being weighed—I beg your pardon—yes; according to my notes you spoke of that not being weighed. Is that typical of a movement of that kind?

A. No; the caustic was weighed, that is, the part load was weighed after it was moved from the vicinity of the refinery and taken up on to what was known as the acid track, but I was unable to locate any record of the weight in the book which ordinarily they used to record cars that were weighed.

By Com. PATTERSON:

Q. Well, do you mean it was weighed in a sense that they separated the car from other cars, or that it just passed over the scales?

786 A. Oh, no; it was the intent to weigh the cars.

Q. It was intended to weigh them?

A. Yes, sir.

Mr. LOVERING:

Q. Have you observed any transfer movements from elevator C?

A. No.

Q. Do you know whether or not there were any made, of your own personal knowledge?

A. I did not see the car moved; I understand that there was one car that was transferred from this elevator down to the flour—around the flour——

Q. You did not see the movement?

A. I did not see the movement.

Q. All right.

A. But ordinarily at that time of the year they are not transferring cars from elevator C down to the mill, they are using what is termed as track grain.

Q. To go back to elevator C once more, you spoke about when placing loads on those unloading tracks they are not coupled to the cars already on that track but they would stop it and then block them?

A. That is true.

Q. Any time when that was done did you observe men working around the cars which were being unloaded?

787 A. Oh, yes; there were men working in the shed at all times when the switches were made, and the purpose of not coupling on to those cars, I know from practical experience would be not to move the cars ahead and perhaps injure somebody that would be working on this string of cars under the shed.

Q. That stop was made as a safety measure?

A. That is correct.

Q. Do you have available now the initials and number of the car we were talking about a few minutes ago, as to which Mr. Burchmore inquired?

A. No; I haven't got it with me.

Q. He wanted the number.

A. I haven't left my chair.

Q. Have you got anything else you care to say in connection with your observation of this operation?

A. I would like to add one more thing and that is the necessity in such instances, according to my observation, for frequent switching——

Mr. Le Forgee. I can't hear you.

The Witness. Will you read as far as I have gone?

(Answer read.)

The Witness. (continuing). On some of the loading tracks. Building 48, for example, where they have no car puller, I think it was testified by Mr. Burwell, on April 15th handled 57 cars. I only use this total to show that that was not inordinary when I was there. Now, this building is only about 200 feet long

788 and you couldn't place many cars, a couple cars would fill it up, and that is just merely one example of the necessity of frequent service on some of the tracks by an engine.

By Com. PATTERSON:

Q. What building is that?

A. I think that is building 48.

By Mr. BURCHMORE:

Q. Building 48?

A. 48 is the starch warehouse. Now, it has a chart which serves both the north and the south side.

By Mr. LOVERING:

Q. Which building are you referring to, Mr. Wall?

A. 48, which is the starch warehouse. It is shown as 48 on Exhibit 2.

Mr. LOVERING. Can we have it identified?

By Com. PATTERSON:

Q. Which track are you talking about, the track on the north side or the track on the south side?

A. Both of them, Mr. Commissioner, it would need frequent switches for both tracks if they were both used to pretty well capacity to handle 57 cars in one day.

Q. One of them, as I take it from the print, is a spur track and the other one is a continuous track?

By Mr. BURCHMORE:

Q. How many cars will they hold at one loading?

A. Pardon.

Q. How many cars would those tracks hold at one placement, do you know?

789 A. I haven't got those figures in my head now, no, but the Exhibit 2 is to scale.

Mr. BURCHMORE. I did not want the information, I wondered what he knew about it because of what the Commissioner said.

The WITNESS. Well, I did at the time, but this is long ago.

Mr. LE FORGEE. Just a moment, to clarify it, did I understand the witness to say now that there are no car pullers at 48, in the illustration just now stated?

Mr. PATTERSON. He said there was no car puller at building 48.

Mr. LE FORGEE. I understood him at the beginning of his examination to say that was one of the buildings where there was a car puller. I just want to get that straight.

Com. PATTERSON. Let me ask you. Is there a car puller there? I will take your word.

Mr. LE FORGEE. I am prefectly willing to tell Your Honor and I think there is, as I understand it, but I want to know as a foundation for his conflicting statement, if it be a conflicting statement, and I don't want to be unfair with the witness. In other words, if I misunderstood him and he did not say in the first instance that there was a car puller there, that is one thing, and if he subsequently stated there wasn't a car puller there, I just wanted to get his testimony clear is all.

Com. PATTERSON. I understood him to say there was not
790 a car puller there just a few minutes ago.

Mr. BURCHMORE. Just now; yes.

Mr. LE FORGEE. Yes.

The WITNESS. There is a car puller that serves track 4–A; there is none that serves track 3–A.

By Mr. BURCHMORE:

Q. Well, you don't know how many cars it holds, that is right?

A. I can guess pretty well.

By Com. PATTERSON:

Q. One of these tracks is on the north side of building 48 and one of these tracks is on the south side of building 48?

A. 4–A is on the south side; yes, sir; and 3–A is on the north side of the building.

Q. Which one has the car puller?

A. The 4–A track.

Q. The one on the north side?

A. The one on the south side of the building, if I have my markings correct here.

Q. Well, do you have them correct?

A. Well, to the best of my knowledge I believe; yes, sir.

By Mr. LE FORGEE:

Q. It was 4–A that you gave us your illustration for the suggestion you wanted to make a few minutes ago, wasn't it?

A. That is correct, and it has a capacity of approximately nine cars.

791 Q. And you used it as an illustration for the reason as you then stated, that there was no car puller there.

Com. PATTERSON. There is no car puller there on the one that does not have a car puller.

Mr. LE FORGEE. That is right, but 48 is the one that has.

Com. PATTERSON. 48 has two tracks; one track has a car puller and one does not have.

Mr. LE FORGEE. That is right, which one is it?

The WITNESS. In order to make my point clear, what I intended to say in the record was that if all of these 57 cars were loaded on

a track where it had a car puller which could handle nine cars, then it would take more than six switches on this track for the day's loading.

Mr. LE FORGEE. Which is purely a matter of argument.

The WITNESS. I am drawing no conclusions.

Mr. LE FORGEE. I did not say it was a conclusion, I said it was an argument.

Mr. LOVERING. I have nothing else.

Com. PATTERSON. Cross examine.

Mr. BURCHMORE. May we have a few minutes recess before the cross-examination? I would like, if possible, to shorten it a little, if that is a laudable suggestion, is it?

Com. PATTERSON. Yes; take ten minutes.

(Recess taken.)

792 Cross-examination by Mr. BURCHMORE:

Q. Mr. Wall, at the beginning of your direct examination in response to a question you stated that in the course of your duties you were directed by the Commission to come out here and make some examination. From whom did you receive your directions or instructions?

A. Well, of course, I am a subordinate in our organization only to our director. Naturally any instructions given to me would come through that source.

Q. Who is he?

A. Mr. De Groot.

Q. Did he give you any instructions as to what you were to do and how you were to do it, or did they come to you from anyone else, in the broad sense of this question?

A. All instructions I get in our bureau comes through my immediate superior, so far as I am concerned.

Q. So that if we wanted to know more about your instructions and what they were and how they were given and the men who gave them, the man for us to inquire of would be Mr. De Groot?

A. I attempted to explain just what happened and I was stopped, I can explain what those instructions were.

Com. PATTERSON. Well, tell him who gave them to you.

By Mr. BURCHMORE:

Q. Yes; who gave you the instructions?

By Com. PATTERSON:

Q. Did Mr. De Groot give you the instructions?

793 A. I accepted my instructions from Mr. De Groot; yes, sir.

Com. PATTERSON. O. K. Then stop there.

By Mr. BURCHMORE:

Q. I inquired with regard to this proceeding and was informed by the Chairman of the Commission that the whole matter was in charge of Mr. Bartel and I should go to him for any knowledge or anything else regarding this matter. I say that because I want to ask whether you got anything from Mr. Bartel.

A. My instructions come from my immediate superior always.

Q. And you did not get any directions or instructions or suggestions from Mr. William P. Bartel?

A. I am not quite sure that he would be authorized to give me instructions. No, sir; I did not.

Com. PATTERSON. We won't argue with the witness. He got his instructions from the director of the bureau and we will let it go at that. As to where he got his instructions is not material here anyway.

Mr. BURCHMORE. I think—well, no comment.

By Mr. BURCHMORE:

Q. Did you receive any written instructions?

A. No.

Q. With regard to the matter out here?

A. No.

Q. At no time?

A. No, sir.

Q. Did you make a report of what you saw in your exam-
794 ination of matters here in September?

A. Yes, sir.

Q. To whom did you submit that report?

A. Always to my immediate superior, Mr. De Groot.

Q. Just leave out the "always." This particular one you submitted to Mr. De Groot?

A. Yes, sir.

Q. Did Mr. De Groot know you submitted one or did he ever see it?

Com. PATTERSON. He does not know what Mr. De Groot knew or saw.

Mr. BURCHMORE. Yes; but he knows whether he gave it to Mr. De Groot or whether he handed it to Mr. Bartel.

The WITNESS. I mailed it by airmail, special delivery.

Q. To whom?

A. The Director of the Bureau of Service.

Mr. BURCHMORE. I would like to have made available to us that report. I just respectfully request it. I have requested it before. May I have a ruling on it at your pleasure, sir?

Com. PATTERSON. If it is an interoffice communication, the reports will not be made available.

Mr. LOVERING. That is my understanding, Mr. Commissioner.

Mr. BURCHMORE. I did not want to argue. I just made the request.

By Mr. BURCHMORE:

795 Q. Now, you were here in September. When you left here what other plants did you visit or what other plants have you visited since you were here?

A. Oh, I can't answer that. I don't know.

Q. You don't even know what plant you went directly to from this plant?

A. No, I went from here to Detroit.

Q. To examine what plant?

Com. PATTERSON. The witness need not answer that question. We won't furnish that sort of information.

Mr. BURCHMORE. I see.

By Mr. BURCHMORE:

Q. Have you since the year 1936 examined the conditions at any plant manufacturing or producing corn products or soy bean products?

A. The Staley plant is the only such plant I have ever been in in my life of that kind.

Q. Now, in your examination in your testimony in chief, in speaking of what you saw and observed and what was done, you frequently used the pronoun "they." Now, I want to ask you whether in examining the plant of the Staley Company you saw or observed any locomotives which were operated by the Staley Company?

A. No; there was none.

Q. Well, when you say "they" in reference to movement of cars and movement of locomotives, and matters of that kind, who do you mean by the word "they"?

A. Well, I would want to know where I used the word

796 "they" before I would answer that question.

Q. I see. Well, may I ask whether—now, you testified that all of the crews and all of the engines and all of the physical movements of cars by means of engines in the Staley plant were performed by some railroad?

A. All of the movements I observed were performed by crews and engines of the Wabash Railway.

Q. Yes, and did the Wabash Railroad—and I ask this because you used the word "they" in reference at times to certain matters of loading and unloading and so forth—did you ever see any cars in here being loaded or being unloaded in this plant by employees whom you thought were employees of the Wabash Railroad?

A. No; I would have no reason to think so.

Q. Well, who were loading and unloading the cars?

A. Well, I don't know where they got their pay from; I don't know who they were employed by.

Com. PATTERSON. If you don't know, just say you don't know; there is no use prolonging this.

By Mr. BURCHMORE:

Q. When you said they unloaded or when you said they loaded, you meant it was Staley people, did you not?

A. I don't know where I used the word "they."

Q. Well, I won't stop to have the reporter read it, but it speaks for itself. You haven't any personal interest or animus in this case, have you, Mr. Wall?

797 A. Absolutely none whatsoever.

Q. You would like to see justice done, whatever it may be?

A. Absolutely, always do.

Q. Now, how long were you here in September, at the time of your September visit?

A. I think it was either—I think it was eleven days in September and the forepart of October; it wasn't over twelve working days.

Q. And how many employees of the Commission were here with you at that time?

A. Three besides myself, three service agents.

Q. And how many days were each of them here?

A. They were here the same length of time I was with one exception; one of the men left, I think, two days early.

Q. And went somewhere else?

A. He had to go on another assignment.

Q. And what were the names of these men in the Bureau of Service?

A. Mr. Strong, Mr. Booth, and Mr. Garman.

Q. Have you visited, on any later occasion, the plant of the Staley Company?

A. No, sir.

Q. How long have you been here in Decatur on this occasion?

A. I have been here this week.

Q. This week? Have you spent any time this week in the plant?

798 A. I haven't been near the plant; no, sir.

Q. Do you know, since you are assistant director of the Bureau, how many men have been in and about the Staley plant or the Wabash terminals in Decatur since the month of September 1939?

A. Yes.

Q. How many men?

A. Two.

Q. Who?

A. Mr. Strong and Mr. Molano.

Q. Do you know how long they have been here or how many days they put in at the plant and at the Wabash terminals?

A. No; I could not answer that.

Q. Is it something like sixty days for Mr. Strong?

A. No; it isn't that long, I know, but I don't know just how long.

Q. Have they made reports to you as to what they developed, what was found, and so forth—discussed with you what they found?

A. No.

Q. You haven't discussed with them what they have found? You haven't discussed with them whether their are any changes in the things you had started?

A. No.

Q. Have you made any effort to ascertain whether any of these conditions and the facts you have noticed have since changed?

799 A. No. sir.

Q. You haven't closed your mind against discovering any change, have you?

A. Oh, no.

Q. Now, then, you made quite a nice little description of this fence about this plant and the gates. As a matter of fact, did you ever see these west gates at the west end of the plant closed?

A. Yes; I saw at least one of the—I think it is the northern most gate at the west end closed.

Q. And does that cover a track?

A. Yes.

Q. And to what does that track lead?

A. I think they designate that track as the mine track.

Q. Leads to the coal?

A. No; it is a track designated as the mine track and is situated on Exhibit No. 2 about midway between what would be the extension of Woodford Street and Jasper Street.

Q. Now, these fences at the two ends of the property that you have referred to, they separate the plant property from the railroad in part, do they not?

A. That is right.

Q. Are you familiar with the fact generally in the State of Illinois and adjoining states as to the—whether it be the usual rule that industrial plants are enclosed with fence for

800 the protection of the railroad cars, as well as for the protection of the plant property?

A. No, I have no knowledge of the state law requirements in that connection.

Q. I am talking about the actual practice.

A. No.

Mr. BURCHMORE. I presume, Mr. Commissioner, we can refer to the statute of Illinois in the brief as regards the requirement of fences.

By Mr. BURCHMORE:

Q. From your standpoint as a service agent having something to do with the service of railroads—and that, I suppose, is your duty after all, isn't it?

A. I am assistant director of the Bureau of Service, that is correct.

Q. And have to do with the service of railroads?

A. Yes.

Q. What, if any, significance do you attribute to the presence or absence of a fence?

A. I merely mentioned that as being an incident in connection with the operation of the plant by the yard crew of the Wabash, the opening and closing of gates. That is the only reason why I mentioned it.

Q. How long does it take to load a car of starch, as loaded at the Staley plant?

A. I would not be able to tell you that.

801 Q. Are they loaded by men with hand trucks or in what manner?

A. Oh, I don't know as I could describe it now. I watched them load all of these commodities but I would not observe exactly what they did.

Q. You spoke of building 48 and the time it took to load and the number of movements of cars in and out, and so forth, but I would like you to tell us about how long, if you have any idea, it takes the Staley men to load a car of starch on that track?

A. I would not know that.

Q. You would not know whether it takes all day or four or five hours or a few minutes?

A. It doesn't take all day, I know.

Q. You know that?

A. Yes.

Q. Now, the unloading of grain at elevators, in what manner is that performed?

A. I think I described the operation of elevator C as the grain being removed by the operation of a scoop or it was dragged

mechanically after such grain as would not fall out of the cars when the grain doors were removed.

Q. And then they use a mechanical——

A. Scraper,

Q. A mechanical device or lifting device that lifts the grain from an underground pit up into the elevator?

802 A. I don't know what happens to it after it goes down in the pit. I did not go into that.

Q. I see. Well, are the cars very rapidly unloaded?

A. Oh, yes.

Q. How long does it take to unload a car, did you notice?

A. I would not want to say in minutes but it is not very long.

Q. It would be a matter of minutes, not hours?

A. Oh, it would not be hours.

Q. Now, were these yard engines—or strike that word "yard"—just these engines that were operated in and about the plant that you say were Wabash engines, were they, according to you standard and observations, as a Bureau of Service assistant director, manned by competent crews?

A. I think they were.

Q. You think they were men who knew their business?

A. Absolutely.

Q. Did it seem to you, judged by your standards, that they did their work well?

A. Yes, indeed.

Q. Did it seem to you that they did their work efficiently or inefficiently?

A. I think they did it efficiently.

Q. Did you make any suggestions to these men from day to day, or at any time, as to a better way the work could be done?

A. Positively not; in fact, I avoided such a thing, I

803 always do.

Q. Did you make any criticisms as to that?

A. I avoided it for the same reason.

Q. For what reason?

A. I don't think that is a function with which I should deal. My duty was observation not criticism or suggestions.

Q. Did you make any suggestion to the Wabash yardmaster or Wabash superintendent of how the men might better do their work or how the work might be done?

A. By no means. I would have no authority to do that.

Q. Well, did you?

A. No.

Q. And you had no instructions to do that?

A. No, indeed.

Q. Did you during your visit in September make suggestions or criticisms or observation to Mr. Burwell or anyone else in connection with the Staley Company with regard to the manner in which the work was done?

A. I did not; I would purposely avoid that; absolutely.

Com. PATTERSON. Just answer yes or no, not what you would avoid or what you would not avoid; say yes or no.

By Mr. BURCHMORE:

Q. Did you, in fact, say anything there in your visit in September that you could now give to me, as the attorney of the Company asking you about it, as to some way the efficiency and the
804 economy and rapidity or any other feature of that work, could have been improved and ought to have been improved?

A. I don't know of anything.

Q. You have no suggestion that you could think of now to offer?

A. No.

Q. Would you be able to do so if you were satisfied that I really wanted to see some changes made that would help it?

A. Not from an official capacity, absolutely no.

Q. Are there some directions or instruction or rules that you have that would prevent your giving any such suggestions?

A. In my official capacity I would not do that; I don't understand that we would be privileged to.

Q. Well, now, you gave facts about a good many transactions as they occurred while you were in there, as you saw them, and I think you mentioned among other things certain transactions as regards coal. Did you see what seemed to be a regular movement of coal from the coal unloading tracks over to the Germ Meal track?

A. No, from the storage pile, coal storage, to the Germ Meal.

Q. From the coal storage pile over to the Germ Meal?

A. That is right.

Q. Would that be a car every day or more than one car every day, according to your observation?

A. I think it was about two cars every third day.

Q. And you say before that took place these cars which
805 would come in were handled in a certain manner from the Wabash terminals, finally to the location in the Staley plant where coal goes?

A. No; these were two Wabash cars assigned to that work, and they just shuttled back and forth between the stock pile and this unloading track.

Q. In the first place the coal has to get to Decatur and get to the Staley plant; that is right, isn't it?

A. Oh, yes, eventually, before it went in the stock pile.

Q. Did you know or did you discover or did you have any information about it, as to whether the coal that comes to the Staley plant and goes to the Staley coal unloading piles and tracks which you have mentioned is all Illinois coal, that is, intrastate in transportation, or is all interstate, or partly one and partly the other?

A. I am not positive but I think that is correct.

Q. What is correct?

A. It is all state.

Q. Do you happen to know whether the rate provided on that was a rate prescribed by the Illinois Commerce Commission?

A. I did not check the rates.

Q. You don't know whether that rate was specifically prescribed to apply to the coal pile?

A. No.

Q. If it was, did it occur to you that it might not be a matter of your—I don't suggest this impertinently—but might not

806 be a matter of your affair at all?

Com. PATTERSON. It would make no difference with the facts. He just stated what he saw. The cars would be moved back and forth just the same.

Mr. BURCHMORE. Sure, but what does it lead us to, Mr. Commissioner?

Com. PATTERSON. Well, I don't know. That is all he testified to. I don't know what he is going to make out of it.

Mr. BURCHMORE. I mention this because it seems to me there is some question of jurisdiction, after all, as well as question of fact.

By Mr. BURCHMORE:

Q. But you said there was a shuttle movement of cars of coal in Wabash equipment from these piles over to the Germ Meal?

A. That is correct.

Q. Now, do you know that the Staley Company pays $3.40 a car on every one of those car movements?

A. I have already testified I did not check the rates.

Q. I did not say anything about rates, I am talking about charges.

A. I did not check the charges.

Com. PATTERSON. If you don't know, just say you don't know and shorten this thing up. You either know or don't know. When he is asking a question you either know or don't know. If you don't know, say you don't know.

807 By Mr. BURCHMORE:

Q. Well, of course, you know the purpose of your visit and you know your instructions and you know your report, and you have that much advantage of me. Now, I am asking you, would it make any difference, for the purposes for which you were

sent and for the purporses for which you made your report, whether that was a movement that Staley paid $3.40 for or not, or whether they got it free?

A. That would not affect my report.

Q. And it would not make any difference for the purpose of your report?

A. That is correct.

Q. And, if it was a movement wholly disassociated from any line haul—and by the way, it was, wasn't it, a movement wholly disassociated from a previous line haul?

A. I don't know.

Q. You don't know whether it was or not?

A. No.

Q. Well, what do you know about that movement?

A. I did not check charges, I do not know——

Q. I am not asking you about charges.

A. You are asking me about one rate or the other. I don't know.

Com. PATTERSON. The only thing he testified to is these arrangements, cars shuttled back and forth between these two tracks.

Mr. BURCHMORE. It could not be that you don't want to
808 know any more than that, could it, Mr. Wall?

A. I did not see that it was important enough to find out.

Q. Please don't know a thing more than you ought to know.

A. I did not think that was important enough to find out or I would have looked into it.

Q. I have to come back to this in a moment. Were you furnished with a copy of the Commission's order to reopen Ex Parte 104, Part II, to disclose what was the subject of the reopening?

A. No, sir.

Q. You did not have that order of reopening?

A. No, sir; not with me.

Q. Were you furnished with a copy of the proposed report that Examiner King rendered in this matter?

A. I have seen it. I did not have it when I came to Decatur.

Q. Did you check against that report as a part of your investigation and work?

A. I never read it before I came to Decatur. I read it after I was here.

Q. Did you have a copy and were you furnished with a copy of the fifty-two page report of Director Bartel on that same matter?

A. I never read it; no, sir.

Q. And you did not check that?

A. No, sir.

Q. Were you furnished with a copy of any other report of
809 the Commission or its subordinates, for checking or use in connection with your work here?

A. I was given a copy of the transcript of the Chicago hearing. That is all I had and I did not read that until after I had practically completed my work at Decatur.

Q. Then, in making your investigation out here, and which I understood you were making for the purpose of checking whether any changes in conditions had occurred—didn't you say that?

A. No, sir.

Q. Well, what was the purpose, as you understood it?

A. To find out what the operation was at the date of our investigation of the operation.

Q. And to what end, or for what purpose, for the purpose of use in this case or for the purpose of bringing about some improvement, or what?

A. I don't know what they wanted to do with it after they got it. All I was to do was observe it as it was at that time.

Q. If you had known the purpose, is it possible you would have been enabled and enlightened and encouraged to discover further facts?

A. I would not have went any further than the facts as they existed at that time.

Q. Then, getting back to this Germ Meal track, as a matter of fact, if the cars were loaded and unloaded within the plant and—well, you know that was the fact, don't you?

810 A. That is correct.

Q. If that in law is an intraplant movement, and if not a matter of tariff, the Staley Company was obliged to pay $3.40 for it, and if, in fact, they did pay $3.40 for it, that whole chain of circumstances was utterly immaterial to you?

A. I would still have included the fact and let somebody use it or destroy it.

Q. And included it in your testimony?

A. And included it in my report.

Q. But you did include it in your testimony here?

A. It was a part of the operation of the plant; yes.

Q. Now, then, you spoke about certain empty movements of cars, or I should say movements of empty cars, within this plant from one point to another. Now, instead of examining you in detail about those movements, I want to ask you this question: Did you examine the provisions of the tariffs and, to be specific or illustrative, the tariff item 120-D in Exhibit No. 19 is illustrative as regards intraplant switching of empty cars?

A. No, sir.

Q. And did you consider what charges might be applicable or what free service might be applicable with regard to such movements under the tariffs?

A. I did not.

Q. Well, now, did you examine to see as to various of these movements that you spoke of, for instance, I think you said
811 there were movements of beans on occasion from elevator——A. C.

Q. C to elevator B?

A. No; I don't think I said that; I did not mean to.

Q. Well, what did you say?

A. There was occasional movements of beans from elevator C to the mill.

Q. Now, were those movements where the beans were taken out of an elevator at C and put into a car and then the can moved over to the mill and there unloaded?

A. That is right.

Q. Did you examine to see whether Staley, under the tariffs of intraplant charges of the Wabash Railroad, was obliged to pay a charge for that?

A. I examined no tariffs.

Q. Do you know whether Staley, in fact, did pay $3.40 a car for that movement?

A. No, sir; I don't know.

Q. You said something, in fact, of a caustic nature about a movement of acid—of an acid nature about a car of caustic. Do you remember that?

A. I remember speaking about the car of caustic.

Q. As I remember that car, it moved from one point or another into this plant, and, after being partly unloaded, was moved again to another location?

812 A. That is right

Q. Now, do you know whether, for that second movement from the place where it had been made partly empty to the place where it was completely emptied, Staley paid $1.98 a car for that and was obliged to pay $1.98 a car for that on the tariff?

A. I did not check that feature.

Q. Would it make any difference for the purpose of your testimony whether they did or not?

A. No, sir.

Q. Well, just what was it about that car of caustic that created your interest and aroused your enthusiasm?

A. The fact that it had been weighed and no record had been made of the weighing and no charge had been paid by Staley for the weighing service.

Q. Now, Mr. Wall, it seems to me very suspicious that you found out there wasn't anything charged for weighing, but you did not or maybe were careful not to find out whether they paid something for the movement of it.

A. Another witness can answer your question but I am speaking for myself. I don't know.

Q. But you were careful to find out only about what they paid for weighing and not to find out what they did for switching?

A. We have that information but it is by another witness and he can answer.

Q. Oh, I see. But seriously, now, will you tell me, under
813 the tariffs of the Wabash Railroad, your conception of what the charge they make for weighing covers in the way of service?

A. I did not again——

Com. PATTERSON. Just say you don't know.

The WITNESS. I don't know.

Com. PATTERSON. There will be a lot of these things that you won't know.

Mr. BURCHMORE. Well, I don't want to embarrass him for not knowing something he should know.

Com. PATTERSON. The point is, if he doesn't know I just want him to say he doesn't know and shorten this thing up.

By Mr. BURCHMORE:

Q. It is immaterial to you, for the purpose of your examination, whether something this industry pays for weighing did, under the tariff of the Wabash, cover a physical movement of the car beyond the mere recording of the weight on the tape of a scale. You don't know?

A. I don't know.

Q. Now, you made a special mention of the fact that without any instructions the crew, the Wabash crew—engine crew, I believe you meant—went over to the Burwell Yard and took cars of beans over to elevator B?

A. No; I said they went from the Burwell Yard to the west end.

Q. To the west end?

A. Yes.

Q. I want to ask you whether you observed that those
814 cars were all carded. Do you know what "carded" means?

A. I think I do.

Q. What does it mean?

A. If you are speaking of a car that has been carded, there is a card put on there with information as to where it come from or where it is going.

Q. Aren't there two ordinary methods, perhaps more, but two ordinary methods by which switch crews know what to do with

a car, one instruction that they get from the yard clerk or yardmaster and another instruction that they get in the shape of a card that is affixed to a car?

A. There are two.

Q. Those are two methods?

A. Yes.

Q. And if these cars that I just spoke about were all carded, and by custom and practice day after day such cars were carded, would that not be the simple equivalent of instruction, and, in fact, instructions to the switch crews?

A. Well, they knew the cars went down there and if they had any of that kind, of course, that would be all right to take them when they—when convenient.

Q. If those cars were carded, would you not want to change your testimony a while ago that it was done without any instructions to the crew?

A. If those cars were carded, that would be considered instructions, but what I meant was that there was no instructions
815 on a switch card such as I hold here in my hand, as to what to do with certain cars.

Q. Did you make any inquiries and investigation here at Decatur with regard to the placement of grain on inspection tracks when consigned or moving to any other concern than Staley?

A. No, sir; I visited no other plant or no other railroad.

Q. Do you know, as a matter of your general knowledge and information as assistant director, what the provisions or requirements of the United States statutes are as regards the inspection of grain?

A. No.

Q. At a point like Decatur?

A. I could not answer that question.

Q. Do you know whether what was done with the Staley grain moving to the Staley plant at the time you were here was in any way different from what was done day by day with all grain for all other consignees at Decatur?

A. I think it was similar.

Q. You think it was similar?

A. Yes.

Q. Then you did not intend by your testimony to imply that there was some special item of service about that?

A. No; by all means.

Q. The inspection could only be done on a track convenient to the inspector, couldn't it?

816 A. That is right.

By Com. PATTERSON:

Q. Well, the inspector got the convenience of the track occasionally?

A. Correct.

By Mr. BURCHMORE:

Q. Do you wish to suggest by your testimony that there is anything about this handling of grain as regards the inspection tracks that was not for the respective convenience of the railroad and the inspector?

A. I will say that I don't think there was anything that was done in connection with Staley cars that is not the general practice as to cars held for inspection.

Q. And reasonably consistent to a fair and reasonable arrangement with the railroad and the Federal inspector?

A. I have no quarrel with the way it was done.

Q. And no criticism of it?

A. No.

Q. Do you know whether inspectors Strong, Booth, Garman, and Molano have, during the past few years or during the recent past, made any examination of conditions at any corn products or soybean plants other than the Staley?

A. Well, they would have to answer for themselves; I don't know.

Q. As assistant director would you not probably know?

A. Well, I know of none. I can answer that far.

Q. It would not be unfair of us, meaning the Staley
817 attorneys, Mr. Le Forgee and I, to infer that they had not?

A. Well, they are here, you can ask them.

Mr. BURCHMORE. There is one matter that Mr. Le Forgee can handle very much more briefly than I can, and I will ask him to in just a minute.

By Mr. BURCHMORE:

Q. I will ask you now to treat these coal tracks in the Staley plant as a little coal yard of a coal dealer. Now, suppose that instead of being part of the Staley plant, that was a water works or a local coal dealer, is there anything about those particular tracks and the way they are operated and the service that is gotten on them, in the placement of cars, and so forth, that is at all different from what a water works or a little coal dealer gets on coal generally from the railroads, as you observed it?

A. The cars, of course, would have to be placed on the track where they are unloaded, but the frequency of service to the track at the storage pile would differ materially from that necessary to a small coal dealer.

Q. And what was that frequency of service, how many cars a day?

A. I can't answer as to the number of cars, but it was a number of times a day that the track had to be set up.

Q. Precisely; and isn't it true that the only element of frequency of service on that track was the intraplant movements for which Staley paid? That is what made the freqency of service?

818 A. No; these cars that were unloaded at the stock pile came from off the line some place. That was still line coal.

Q. Well, how many cars of coal were there each day when you were there that went to that track?

A. Oh, I don't know how many cars were handled each day, but I do know there were in excess a considerable number of cars that could not be handled currently or were not handled currently and unloaded.

Q. Well, now, during the week of April 15th to April 20th, I think Mr. Burwell has testified that there were 74 cars of coal altogether in those five, six days, which would be 12 cars a day. About how many cars per day of coal, was it as many as twelve any one day that you were there, at the time you were there?

A. I can't answer that now; I don't know the number.

Q. Well, if there were as many as twelve cars a day, would you suggest that they made six or eight trips to take those twelve cars?

A. Oh, they would not have to make six or eight trips to take care of twelve cars.

Q. How many would they have to make for twelve cars?

A. They could place perhaps that many at the stock pile at one time.

Q. Yes. Well, then if the Wabash is running over there every once in a while with some more cars, and there is only

819 twelve a day, these Wabash men are making a little fuss about their work to show how busy they are, would you suggest that?

A. No, I would not suggest anything about your operation.

Q. What is there in the way of demands of the industry or the requirements of the traffic of that coal to those piles that resulted in frequency of service?

A. The fact that the cars—the track accommodation at the stock pile was not sufficient to take care of all cars of coal on hand.

Q. And how many cars will those tracks hold?

A. I have no figures on that now.

Q. Can you estimate it from your best recollection and your faded map?

A. I would say the tracks were a maximum of six or seven hundred feet long.

Q. And how many coal cars would six or seven hundred feet long hold?

A. I think it would be fair to estimate that a coal car would perhaps take up forty-eight feet of space, of track space.

Q. So they might hold twelve cars on that basis?

A. That is true.

Q. Would it be possible for you to ascertain and advise me later how many cars of coal were unloaded during the days you were there, or could you conveniently do so?

A. I could not get it from my records. I could be perhaps obtained from the Wabash records. I don't know.

820 Q. Can you furnish us the dates that you were there?

A. Yes.

Q. Would you do that within a reasonable time?

A. Yes.

Mr. BURCHMORE. Mr. Le Forgee?

Mr. LE FORGEE. There is one matter I want to interrogate the witness about.

Mr. LE FORGEE. Mr. Wall, if I understood you correctly, in your direct examination you said you were out at the Staley plant?

A. That is correct.

Q. Some days the latter part of September and the first part of October?

A. That is true.

Q. That was in 1939?

A. That is true.

Q. And when you finished your visit upon that occasion, and after you had completed your examination, it was upon those facts, as you had gathered them, that you made your report, whatever it was?

A. That is right.

Q. How long was it after that before you submitted your report? I am not asking what it was nor to whom you submitted it. How long was it after that before you made a report?

A. Well, I can't tell you exactly.

821 Q. Approximately?

A. Within a week.

Q. Within a week?

A. Within probably three or four days.

Q. Now, at the time you left the plant you were in possession of the various facts and the geographical location, the operations in the yard, what transpired at the Staley plant, as you have detailed it to the Commissioner here today, were you not?

A. Yes, sir.

Q. Your recollection about those matters is very clear, isn't it?

A. Well, it hasn't been very long ago; I think I have a fair idea.

Q. You have an accurate recollection as to what you saw?

A. Yes.

Q. And you have told what you observed; that is right, isn't it?

A. That is what I have—what I testified to.

Q. During the occasion that you were there and made that examination, as a result of that examination you observed the location of the buildings?

A. Yes.

Q. You observed where the car pullers were?

A. Yes.

Q. The method in which they were operated?

822 A. Yes, sir.

Q. The fence?

A. Yes.

Q. The gates?

A. Yes.

Q. And the location of the coal yards?

A. Yes.

Q. And you also observed the cars as they were brought in and put in the various tracks and switched, and, as I understand you, counterswitched, reswitched?

A. That is right.

Q. You saw all of those matters, and you saw how the cars were taken into the scale house?

A. No, not into the scale house.

Q. Well, you saw the track over which they were taken, did you not?

A. Yes, sir.

Q. And you learned about the operation of that movement, did you not?

A. Yes, I testified to it.

Q. You learned about what transpired in relation to the cars in the cleaning track, did you not?

A. Yes.

Q. You were also fully advised in relation to the inspection tracks, were you not?

823 A. Yes, sir.

Q. And the method in which the cars were inspected?

A. Yes.

824 Q. You had also observed that the engine, as it came in there with the various cars, was under the exclusive jurisdiction and control of the Wabash Railway Company, and its employees, did you not.

A. I don't believe I know what you mean by that.

Q. I mean—I will broaden the question a little—that the operation of the engine and what occurred was at a time when it was in the possession of, and under the control of the employees of the Wabash Railway Company?

A. Yes.

Q. That involved not only the switching—the movements of the switch engine, but of the various cars, did it not?

A. Yes.

Q. Now, while you were there and engaged in that investigation, you formed the acquaintance of Mr. Gogerty, did you not—Mr. Thomas Gogerty?

A. That is right.

Q. Do you recall what position he held there?

A. I don't know his title; no.

Q. Well, you regarded him as someone in authority, so far as that yard was concerned, did you not?

A. He was so delegated by Mr. Burwell; yes.

Q. For what purpose?

A. For the purpose of going along with the representative of the Wabash and representative of the Commission to see
825 whether or not they could all agree on the facts as to the operation in this yard and set forth in this report——

Q. Without getting into what that was, he did go with you with a view of making this inspection, did he not?

A. And with a view of making a final report to which he could also subscribe to the principles, the facts.

Q. You went with Mr. Gogerty and Mr. Gogerty conducted you through the plant for the purpose of making this investigation and to advise you what the conditions were, did he not?

A. Yes.

Q. He gave you in detail and disclosed to you everything in relation to that plant and the tracks that was to be seen, did he not?

A. I think he did.

Q. And when you completed, you were entirely satisfied with the facts which you had obtained and you felt that you knew entirely what the situation was at that plant, did you not?

A. In a general way; yes, sir.

Q. Well, it was pretty thorough and in considerable detail, was it not?

A. As well as we could do within nine days.

Q. Yes. At any rate it was sufficient upon which you felt you were justified in making this report.

A. I though my assignment had been completed.

Q. Yes. Do you remember of being with Mr. Gogerty
826 near the west end of the yard a day or so before you left Decatur?

A. Well, we saw each other almost daily.

Q. Shortly before you went away, in which you discussed the conditions in the yard and the operation of the cars and the movements of the trains and the activities of the Wabash and of the Staley Company?

A. I can't single out any particular day.

Q. I will ask you if it isn't true—I am not speaking about a particular day, I am speaking about an occasion shortly before you left Decatur, when you talked together at the west end of the yards?

A. No; I can't single out any particular occasion.

Q. Refreshing your recollection, I will ask you if it isn't true, upon that occasion and at that time and the point I have indicated, that Mr. Gogerty did not ask you, "Is there anything in the line of the car handling by the railroad that the Staley Company is doing which is wrong, if so, we would be glad to make any corrections necessary?" And if you did not reply upon that occasion, and say, "I see nothing; there is nothing that I can see."

A. I don't remember the occasion, but if the question was asked again I would say the same answer that you have just quoted.

Q. No, no, isn't it true that he asked you that question, in substance, and in substance you made that answer?

A. I don't remember it, but I would have answered it that way.

827 Q. Wouldn't it be your best recollection——

Com. PATTERSON. Mr. Le Forgee he does not remember the question being asked, but, if it was asked, he would have made the answer you gave him.

By Mr. LE FORGEE:

Q. If you did make that answer, you made it because it was true, did you not?

A. I would make it again.

Q. And that is the fact today, isn't it?

A. I don't know; I haven't been there since.

Q. But so far as you are advised and informed, that answer, if made by you, was true?

A. I would make it again as of the date I last saw the plant.

Q. Yes; that answer as you made it that time, if you did make it, was true and correct?

A. I know of nothing that was being done by the Wabash switchmen that was wrong, or by the Staley Company.

Q. And when you made that statement at the time, you intended to give to Mr. Gogerty in a few words and in that answer the conclusion that you had made with relation to the investigation that you had made?

A. I only meant to convey that I could offer no suggestions for any improvement or no criticism.

Q. That is the way you felt about it?

A. Yes; as to the operation.

Q. That is all.

828 A. That goes only as to the operation.

Q. That isn't one of the things you testified about?

Com. PATTERSON. No use arguing about that; he said he had no criticism to make.

Mr. LE FORGEE. I understand. He has answered the question, I think, Mr. Commissioner.

Com. PATTERSON. Is there any more cross-examination?

By Mr. STRASSER:

Q. Mr. Wall, prior to your connection with the Bureau of Service, were you engaged in railroad operation?

A. Yes, I had about twenty three or four years.

Com. PATTERSON. Would you like to have the witness qualified?

Mr. STRASSER. No; I just want to ask a general question leading up to another question that I have.

By Mr. STRASSER:

Q. And you have had occasion in your experience to investigate or familiarize yourself with the operations of large industrial plants?

A. Oh, yes.

Q. At various points?

A. I have not only investigated, I have switched some of them.

Q. Now, then, how does the operation within the Staley plant by the Wabash Railway, and the handling of the Staley cars, compare with the operation of comparable plants coming within your knowledge, as to efficient handling of the traffic?

829 A. Mr. Strasser, I would have no criticism whatsoever of the efficient manner in which the Wabash switchmen do their work in the Staley plant.

Q. Would that same thing apply as to the expeditious handling of the cars?

A. So far as the railroad operation is concerned, I would have no complaint or no comment, no criticism.

Q. It compares favorably with that of any other plant of which you have any knowledge?

A. My only assignment here was to determine what was done, and on what instructions, not how long it took to do it after they got the instructions to perform some kind of service.

Q. Well, I am asking you now as to what your opinion is as to the operation, after you have made your investigation out there, as to how that operation compares with the operation of other large industrial plants of comparable size, as to efficiency, expeditious handling of the work, utilization of time, and everything that enters into the efficient and economic operation of a plant of that kind?

A. I think the work that was done by the Wabash men on the instructions they received to do certain work was done just as efficiently there as in any other plant I have ever seen.

Com. PATTERSON. He says you did a pretty job; you don't need to prove it.

By Mr. SMITH:

Q. Mr. Wall, am I right in my understanding that insofar as the operations and movements are concerned that you
830 detailed in your testimony, you did not distinguish between intraplant movements?

A. No, sir.

Q. Movements that are strictly intraplant, and movements connected with the movement of traffic to and from the plant?

A. My investigation was entirely of the operation within the plant, whether it involved state cars, interstate cars or intraplant cars.

Q. And in the movements that you have detailed in your direct examination, you have not distinguished, as I understand it, between intraplant movement and movements connected with the movement of traffic to and from the plant?

A. I don't recall saying very much about the intraplant movements.

Q. That is it, you described a great many movements——

Mr. BURCHMORE. He said just of the car, Mr. Strasser.

Mr. STRASSER. Well, as I understood it, he did not distinguish between the two.

Mr. BURCHMORE. He did, but he did not distinguish whether it was something that was paid for or not.

Com. PATTERSON. How could there be intraplant movement coming from a connecting line or from an interchange of the Wabash? Those are the cars he traced through.

Mr. SMITH. He also dealt with a good many movements, as I understood it, within the plant.

831 Mr. BURCHMORE. A lot of movements that we paid for. That hasn't anything to do with the subject of this case.

Mr. SMITH. The question in my mind is, he did not describe the movement of coal, to begin with, as strictly intraplant movement so as to bring it home to the listener that this was an intraplant movement.

The WITNESS. During the time I was there the only intraplant movement of coal was that movement of two cars every three days from the stock pile to the bean dryer; and track coal was coming in from the mines in quantities that was sufficient to supply the needs of the plant and the oversupply was put in stock. There was no intraplant movement as there perhaps would have been later, of movement from the stock pile to the powerhouse.

By Mr. BURCHMORE:

Q. Well, one other thing on that line. You did not investigate to see whether for that movement of returned cars—you spoke of some cars that had been taken out of the plant, I think it was feed or something, and then the next day had to be taken back to be reprocessed—you knew Staley paid for that movement, did you not?

A. I did not check it myself but I understand a switch charge was assessed on the basis that the car had moved within the plant.

Mr. BURCHMORE. Doesn't that make a lot of difference for the purpose of this inquiry, that that is something that Staley
832 paid $3.40 for and didn't get free? We think it does.

Com. PATTERSON. It may make some difference for the purpose of the inquiry but not to the witness.

Mr. BURCHMORE. Not to the witness, that is right. That is all.

Com. PATTERSON. That is all.

The WITNESS. Mr. Commisioner, I now have that tank car and I can supply it if you want it.

Com. PATTERSON. That is for Mr. Burchmore?

The WITNESS. Yes. GATX 21436.

Mr. BURCHMORE. Date?

The WITNESS. Do you want each move?

Mr. BURCHMORE. No, just any date, one date on it is all I want, what month and year and day, if you know.

The WITNESS. September 29th and September 30th.

Mr. BURCHMORE. That is all.

The WITNESS. We have those movements.

Com. PATTERSON. That is all.

(Witness excused.)

R. S. BOOTH was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Your name and occupation, please?

A. R. S. Booth, Service Agent, Bureau of Service, Interstate Commerce Commission.

833 Q. How long have you been connected with the Interstate Commerce Commission?

A. Since January 1919.

Q. What are your duties as Service Agent?

A. Well, they ordinarily pertain to car service matters, including the checking of demurrage, car supplies, car orders. We are frequently assigned to special work of various kinds.

Q. In connection with these duties, did you participate in an investigation dealing with certain operating practices in connection with the handling of traffic by rail in and out of the plant of the Staley Manufacturing Company at Decatur?

A. I did.

Q. When was that investigation made?

A. I was here from September 25th to October 5th.

Q. While engaged in that work——

By Com. PATTERSON:

Q. What year?

A. 1939.

By Mr. LOVERING:

Q. While engaged in that work did you, as part of your duties, make copies of certain records located at the scale house within the Staley plant?

A. I did.

Mr. LOVERING. I would like to ask, Mr. Commissioner, that the 14 photostats there, all but two of which bear the notation "Grain releases," be marked for identification.

Com. PATTERSON. That will be No. 26.

834 (Exhibit 26, Witness Booth, marked for identification.)

By Mr. LOVERING:

Q. Mr. Booth, those 14 photostats that you have there, which have been marked for identification as Exhibit 26, can you identify those and state what they represent?

A. Well, they are copies of what is spoken of as grain releases that I made personally from Wabash records kept in the scale house office.

Q. What is shown on those records—on those photostats?

A. The car number, contents, the elevator to which the car is to be delivered, and the road over which the car came in.

Q. What is the date on the first five of these?

A. September 28.

Q. On the first one of these the word "Rush" appears opposite Car 80930?

A. That is correct.

Q. Was that on there when you copied it?

A. Yes, sir.

Q. Did you make any inquiry as to what that meant?

A. Yes, I did; it indicated exactly what that meant; that they wanted a prompt movement on that car, they could use it right away.

Mr. BURCHMORE. Just a minute, to avoid cross-examination and delay and all that—we want to be nice about this—instead of saying you made inquiry and so forth, can't he say who he asked and what he was told, instead of just saying, he made inquiry?

835 Com. PATTERSON. Yes.

The WITNESS. Well, I asked Mr. Bauer, the Wabash yard clerk in that particular case, because he is the man that makes the records and keeps them.

Mr. LOVERING. The thought occurred to me that in connection with the various bits of information they acquired several months ago, they might not remember in every case.

The WITNESS. Of course, we asked Mr. Bauer and different people questions. I may not always be able to tell you exactly who; I will try.

By Mr. LOVERING:

Q. On the fifth of those photostats checked on September 28, opposite the sixth card listed at the top appears the notation "Do not set until after 7 a. m. 9/30." Did you make any inquiry concerning that?

A. Yes; those were cars that they wished held out; they were not ready for them for some reason.

By Com. PATTERSON:

Q. And who wished them held out?

A. The Staley people had evidently notified Mr. Bauer, the Wabash yard clerk, that they did not want delivery on those cars, wanted them held back until the 30th.

Q. Do these releases indicate the order in which the cars will be found, or do they just come anyway?

A. No. You mean the way they would be found on the track, where they were standing?

Q. On the track.

836 A. No. This first sheet here, for instance, the first two cars are not on the Wabash inspection track, they are coming from the I. C. Next we have from the B. & O. and the last half of the card are Wabash cars, which would be on the inspection track but would have no bearing on the location on that track.

Q. How many grain cars did you observe while you were there, how many grain cars are released daily?

A. Well, on one particular day, September 29th, I believe there were 87. That varies, of course.

Mr. BURCHMORE. Let's get that question straight. May it be read?

(Question read.)

The WITNESS. Of course, I did not observe these releases but I checked the records to see how many were released that particular day.

Mr. BURCHMORE. We understand you are testifying that on September 29th, you were there and there were 87 cars released?

The WITNESS. That is correct.

Mr. BURCHMORE. Suppose that does not agree with this ticket here? Would you just explain it?

Com. PATTERSON. This is September 28th, this ticket isn't the 29th.

Mr. BURCHMORE. Well, never mind.

The WITNESS. There is three days—there are three days there.

837 Mr. BURCHMORE. Never mind; I am sorry I said it.

Mr. LOVERING. I think there are three days covered by the 14 photostats.

Mr. BURCHMORE. I see.

Mr. LE FORGEE. What difference does it make?

Mr. LOVERING. Mr. Commissioner, we have here seven photostats covering the federal grain inspection track, which we ask that they be marked for identification.

Com. PATTERSON. They will be received and identified as No. 27.

(Exhibit 27, Witness Booth, marked for identification.)

By Mr. LOVERING:

Q. Mr. Booth, the seven photostats which you have just been given, will you please identify them and state what they represent?

A. They are copies of the track checks made by the Wabash employees of the federal inspection track, as they call it.

Q. Of what railroad.

A. Of the Wabash Railroad.

Q. On what dates?

A. Well, I have copies that are made 9/28 to 9/30. That would be only three days here, the 28th, 29th and 30th.

Q. This is the copy that has been identified (indicating). Please look at that.

A. Yes, I have photostat copies of that.

Q. What dates are on there?

838 A. September 28th, 29th, and 30th, 1939.

Q. Mr. Booth, by way of explanation, I note that there two of those photostats are typewritten. Will you please explain that or clear it up?

A. Well, one of the copies—they are all in sets, as you can see—became torn and we checked it, so that would not photostat well, So I had that copied on a typewriter. I checked the typewritten copy with my original. The other one, we had put some additional information on there relative to the time the cars were released by the Government inspectors, so, in order not to show that information, we had that recopied. That was checked, too.

Q. Did that information in connection with the Government inspection—was that a part of the track check itself?

A. No; this was information that we added on there in following some of these cars through to see just what days they were released.

Q. You found out subsequently that you needed the information as to the tracks but you wanted to get it free and clear of the grain release, is that it?

A. We did not need that information, we used that as a work sheet, you might say; so, in order to eliminate that information that wasn't needed at that point anyhow, why, we copied that one sheet. There is some more in there but we did not happen to use the other copy.

839 Q. Referring to your track check copy, time 11:40 p. m. on September 28th, will you please state what information is shown on the left-hand side?

A. The car initial number, and on the contents, load.

Q. What information is shown on the right-hand side?

A. The contents abbreviation, beans, corn, and so forth. The "W" circled indicating the car is to be weighed; capital "b" indicating destination of the car to Elevator "B." Then a "W," the first car here I am talking about, indicates that the car came in over the Wabash.

Q. Well, what is the heading at the top of the photostat, indicating what it is? I believe you stated federal inspection track?

A. Federal inspection yard.

Q. This part of the information you have referred to, is that covered by the regular check of the inspection track?

A. No, this information was added by the Wabash yard clerk from the grain releases, which is the exhibit we introduced just before; No. 26, I believe.

Q. When you say "this information," which information do you mean, on the right-hand side?

A. This information on the right-hand side, the commodity, the weighing indication, the destination, and the road that the car moved in over.

Q. That was added, you say, by the yard clerk, after
840 receiving the information from the Staley Company?

A. Yes; that is correct. He takes the information from the grain releases, transposes that on the federal inspection track, and then uses an extra copy of that federal inspection track with this added information as a switching list for the switch foreman.

Q. In the information there on the right-hand side, which I understand covers the release information, what is meant by the capital letter "w" in a circle?

A. That indicates that that car is to be weighed.

Q. What is meant by the letter "B"?

A. B; that is the destination; Elevator "B."

Q. What is meant by the letter "W"?

A. That is the road they brought it in over, the Wabash.

Q. Was that necessary to have on there—I will withdraw the question. That is beside the point. Can you state from your own personal knowledge or information what use ordinarily is made of the information such as is on that photostat, what the yard clerk does with it, if anything?

A. He uses that information to have those cars removed from the inspection track and placed on a certain track in the Burwell Yard en route to the elevator that they are destined to.

Q. Who does he give the information to?

A. He gives it to the yard switch foreman.

Q. In what form, in the same form?

841 A. Yes; in some instances he will us a copy of this form right here, the federal inspection track check with the added information. In others, why, he will make it out on a card; but I think that ordinarily, from what I saw of the operation, he uses these and it saved them considerable extra copying. They had an extra copy of the inspection track available.

Q. Mr. Booth, when you were here in September and October, what procedure was followed with respect to movements going out of the plant, loaded cars and empties both?

A. Well, they receive that information and tabulate in similar form. We speak of that as deliveries.

By Com. PATTERSON:

Q. Well, these cars going in marked "W" in a circle, that means "weight"?

A. Yes, sir.

Q. Where do they weigh those cars, in the Wabash yard or in the Staley Company's plant or in the Burwell Yard, where do they weigh them?

A. All cars are weighed at the Staley scale at the west end of the plant.

By Mr. BURCHMORE:

Q. What?

A. That isn't exactly correct, either, because all cars that handled by the Wabash for weighing are weighed at that p ticular scale and these cars are weighed on the Staley scale the west end of the Staley plant.

By Com. PATTERSON:

842 Q. Where this "W" appears in the circle, does that in cate any particular weighing point or just that they m be weighed some time before they are unloaded?

A. It means they must be weighed before they are unload You notice on that first sheet the first two cars show weighed

Q. The first sheet doesn't show anything.

A. No; car No. 9 there; the 9th car.

Q. Oh, the second sheet.

By Mr. BURCHMORE:

Q. What car number?

A. On the first sheet there.

By Com. PATTERSON:

Q. Yes; 94021?

A. That is correct.

By Mr. BURCHMORE:

Q. On the second sheet?

Com. PATTERSON. Yes.

The WITNESS. That is your first car to weigh. The next c shows to weigh.

By Com. PATTERSON:

Q. Yes, I see, it shows to weigh, but is that instructions to wei at any particular point? How many scales do they have arou the place?

A. Well, they only have a one-track scale where an engine c weigh a car. They have another track scale at Elevator "A."

Q. Who do you mean by "they"?

A. The Wabash.

Q. The Wabash have a track scale in the classification——

A. No, sir; the Wabash doesn't. The Wabash has no scale the Staley plant. The scales all belong to the Staley Co

843 pany, it is my understanding.

Q. The Wabash have no scales—no track scales in t Decatur terminal?

Mr. BURCHMORE. Oh, yes.

The WITNESS. They have, in the Decatur terminal, I unde stand, but not within the Staley plant.

Com. PATTERSON. No; I know that, but what I am trying to develop in my own mind is what significance does this "W" have so far as where the car will be weighed?

Mr. BURCHMORE. We are going to find that out in the briefs, Mr. Commissioner, I think.

The WITNESS. No; I think I can explain that.

Com. PATTERSON. I thought perhaps the witness would know.

The WITNESS. What it really means is that that car is to go to the scale in this scale house in the west end of the plant and be weighed.

Com. PATTERSON. I see.

The WITNESS. That is what that means.

Mr. BURCHMORE. Well, where did he get that idea, would you ask him, Mr. Commissioner?

The WITNESS. From observation and——

By Com. PATTERSON:

Q. Well, during the time—I will ask it this way—during the time that you were there, were all the cars marked with a "W," circled, taken to the plant of the Staley Company and weighed?

844 A. Well, I could not answer that because I did not check all cars, but I would say that a number of them that were marked were taken there and weighed, and I am quite positive that all bean cars, for instance, going to Elevator "B"—and that is what these are—go over the scale at the west end of the plant and are weighed before they are placed for unloading.

Mr. BURCHMORE. Well, that is right, Mr. Commissioner, I understand it now, but I don't suppose he knows whether we pay for the weighing or not, do you?

The WITNESS. Yes, I do.

Mr. BURCHMORE. Well, we will find out.

Com. PATTERSON. This one knows.

Mr. BURCHMORE. He has been snooping, I will say.

Mr. LE FORGEE. Well, it is a novelty, anyway.

Mr. BURCHMORE. It must be certain, if he knows.

Com. PATTERSON. Well, you have had some convenient witnesses who are forgetful, too, you know that.

Mr. LOVERING. Off the record, please.

Mr. BURCHMORE. Well, on the record, Mr. Commissioner. You are going to accuse us of being pretty lengthy, I think.

Com. PATTERSON. No.

Mr. BURCHMORE. I mean, on this cross-examination, and we will be quite lengthy, but it might be we can agree on this. Maybe we can have it revealed what this is all about, for your benefit and ours.

845 Com. PATTERSON. What do you propose to show by this?

Mr. LOVERING. The sole purpose of having in these releases and deliveries and photostats of that kind is to show the practice which prevailed at the time our men were here, how the traffic was being handled, what instructions were issued to switch crews, in what form they were issued, and those show the checks of the grain inspection track, they show the releases, they show the way the releases are transposed or copied by the yard clerk off on to the check of the inspection track, and then they show the deliveries of cars going out to the various lines, all photostats taken right from the Wabash records there.

Mr. BURCHMORE. Are these records of the Wabash Railway?

Com. PATTERSON. I understand——

Mr. BURCHMORE. These are records of the Wabash Railway?

Com. PATTERSON. Yes. The originals are here if you care to see them, I understand.

Mr. BURCHMORE. Well, that is all right. Do they not speak for themselves?

Mr. LOVERING. Well, we are not putting in the originals.

Mr. BURCHMORE. No, no; but we haven't said anything about the originals.

Mr. LOVERING. I misunderstood your objection.

Mr. BURCHMORE. Don't these speak for themselves?

Com. PATTERSON. I think so.

846 Mr. BURCHMORE. We are thinking about waiving the originals unless there is something you want to say about them that would make——

Mr. LE FORGEE. They speak for themselves.

Mr. LOVERING. All I am doing by this witness is introducing these particular documents.

Mr. BURCHMORE. For what purpose? Is it to show something other or different that Mr. Wall testified?

Mr. LOVERING. He testified generally. This will show more specifically. Now, I can't tell you offhand whether I have subsequent questions of other witnesses—I presume I have—referring back to these photostats. I think I am quite safe in saying I have; I am going to refer back to them.

Mr. LE FORGEE. What difference does it make?

Mr. LOVERING. We do have the originals?

Mr. LE FORGEE. We are waiving the originals.

Mr. BURCHMORE. We haven't asked for the originals.

Mr. LOVERING. But they are here for the purpose of comparison.

Mr. BURCHMORE. Do you think we will find them any different?

Com. PATTERSON. Well, go ahead and we will see what——

Mr. BURCHMORE. Mr. Commissioner, we think, if these are material and relevant and competent, waiving the question that

they are not the originals, we ought not to be losing a lot of
847 time over them and we are a little bit concerned over the time that is ahead of us.

Com. PATTERSON. So am I. Well, go ahead, examine your witness. I would like to know myself what these purport to show.

Mr. LOVERING. Well, I believe the witness explained the check of that federal grain inspection track and how the yard clerk has transposed the information from the releases on to that yard check. Off the record, please.

(Discussion outside the record.)

Com. PATTERSON. Well, what are you going to do now?

Mr. LOVERING. Introduce the——

Com. PATTERSON. I know, but what is this?

Mr. LOVERING. Those are the deliveries, those are the out-bound traffic.

Com. PATTERSON. Well, let the witness explain for my information and for the record what the exhibit is.

Mr. LOVERING. I will. You asked me what it was about. I will ask that those six photostats, marked as indicated at the top as deliveries, be marked for identification and given an appropriate number.

Com. PATTERSON. They will be accepted and identified as Exhibit 28.

(Exhibit 28, Witness Booth, marked for identification.)

By Mr. LOVERING:

Q. Mr. Booth, at the time you were working here in Sep-
848 tember and the first part of October, what procedure was followed in getting information to the yard office in connection with the cars going out of the plant?

A. Why, the telephone would ring and the yard clerk would answer it and then he would start to copy down a lot of car numbers and initials and the contents, and so forth, and that is what the deliveries are.

By Com. PATTERSON:

Q. This is what he copied?

A. This is what he copies.

By Mr. BURCHMORE:

Q. This is what he wrote down. You don't know what the man on the other end said.

A. In other words, these are cars that are to go out.

By Mr. LOVERING:

Q. Did you make copies of some of those deliveries?

A. I did.

By Mr. BURCHMORE:

Q. Have you got the original of this right in front of you?

A. I have my copy, I don't have the original. I understand the Wabash has the original.

Q. May I just ask one question? Are these papers you have shown us copied from a piece of paper with the same exact appearance and the same exact contents and all that sort of thing, of which the original is over in the Wabash possession, but it looks just like this except it is different handwriting?

A. That is correct.

Q. It isn't something you compiled from a big book or
849 anything else?

A. No, sir; that is copied from the original forms, some of them thin sheets and some of them the same as that, on heavy cardboard.

Mr. BURCHMORE. Let's just treat these as those they were the originals; we are trying to save controversy.

The WITNESS. And I initialled each one of them, that I copied it, and the date it was copied.

By Mr. LOVERING:

Q. Mr. Booth, how many cars were moved out of the plant on this particular day, according to those delivery sheets?

A. On September 29th?

Q. That is right.

A. There was 131.

Q. How many loads?

A. 79 loads and 52 empties.

Q. Did you make any record as to the number of cars concerning which the yard clerk on duty at the scale house would receive information during one 8-hour shift?

A. I did one day, on September the——

Q. What was that date?

A. The 29th.

Q. Will you please state what you found in that connection?

A. Well, that was the day that he received 87 grain releases and he got instructions as to the placing or movement of 50
850 cars and had 35 out-bound loads. That was information that he received during the first trip on September 29th.

Q. Do you know of your own knowledge what the records show as to whether any of the cars covered by these deliveries that we have just been discussing, or any other deliveries, were returned to the plant?

A. Yes; I do know that some deliveries—cars spoken of as deliveries were later returned to the plant.

Q. Did you make any examination of the records to find out how many had been returned?

A. I did.

Q. For what period?

A. September 22nd to September 30th.

Mr. BURCHMORE. Well, now, he has given us the details here of September 29th. Couldn't he tell us what cars there were on the 29th that came back?

Com. PATTERSON. Yes; on the 29th.

Mr. BURCHMORE. Because, by picking out one single car one day and another car another day, you can make us look like negroes here, whereas we are white men if you take it all one day.

By Com. PATTERSON:

Q. Yes; as I understand it, these cars were brought out from the Staley plant to the classification yard and some of them went back?

A. That is correct.

851 Q. Which ones went back?

A. Well, I will have to check here to see. You see, that included an intraplant switching and you have to pick them out one at a time. One day might not be representative. That is the reason I did not pay much attention to one particular day. We took a period that we thought would be representative.

Q. Were there any of those cars on this day?

A. On September 29th, here is C. & A. 17916, that is a carload of feed, moved from yard to 8B and transfer. The next car is I. C. 155020, the same information there; in other words, feed from yard to 8B for transfer. That heading would hold good for these others. Do you want me to give you some more? Wabash 8098.

By Mr. BURCHMORE:

Q. On September 29th.

A. Yes, sir. Wabash 80852; C. G. W. 87050; B. & O. 272352; I. C. 158016. That moved from yard to 8B to finish load rather than the transfer.

By Mr. LOVERING:

Q. Were the others all transfers?

A. The others all show transfer.

By Com. PATTERSON:

Q. And all of those cars paid $3.40 a car charges by Staley to Wabash?

A. The transfer cars would pay $3.47 and the finish load car would pay $1.98.

Mr. BURCHMORE. That is right.

By Com. PATTERSON:

852 Q. Now, I notice on this first sheet of Exhibit 28, September 29th, Rock Island 157411. It says "hot" on there. What does that mean?

A. Why, that is an expression that they use to indicate that are car is to get out out on the afternoon train, the late train, on that particular day.

Q. Well, did the Staley employees telephone that over?

A. I don't believe that has been brought out but that is my understanding, that all of this information on these three exhibits was furnished by Staley employees to the Wabash yard clerk located in the scale house.

Mr. BURCHMORE. Well, now, Mr. Commissioner, in view of the testimony that was given by the Wabash men and by Mr. Burwell, I think, in fairness to us, to save time, to save controversy, he should say point-blank, when the other men all testified that this information was given by the Staley Company to the Illinois Central or the Pennsylvania and the Baltimore & Ohio, and that they and they only communicated over here to the Wabash, unless I am mistaken. Does he want to say that the other end of this conversation he heard was a Staley employee and it wasn't some employee of some other railroad?

The WITNESSS. That is my understanding, that it was a Staley employee.

Com. PATTERSON. These cars came out of the Staley plant.

Mr. BURCHMORE. I know. That is all I want to say. If he knows who was on the other end of the telephone——

853 The WITNESS. I have information given me as to who was on the other end of the telephone; yes, sir. On the grain releases, they stated that came from Mr. Burwell's office.

By Mr. BURCHMORE:

Q. Well, how do you know who was on the other end of the phone?

A. I have no way of knowing that except what I was told, and I took that at its face value.

Q. You were told right there and by the man that was on this end, the end you were?

A. Yes.

Q. And who did he say was phoning to him?

A. The grain releases came from Mr. Burwell's office. I understand they came from a girl.

Q. And these on Exhibit 28 came from whom?

A. The deliveries——

Com. PATTERSON. Well, it is Exhibit 28 that I am talking about.

Mr. BURCHMORE. That is what I am, but he brings in the car releases off of Exhibit 26.

The WITNESS. Well, all three of them. They come from different people: No. 28, the deliveries, if you want to know who they came from, they were supposed to come from a Mr. Beck, in Building 20.

Mr. LOVERING. Have all three been covered, Mr. Commissioner?

Com. PATTERSON. Well, I don't know.

854 Mr. BURCHMORE. What?

Com. PATTERSON. He asked me if all three had been covered. I told him I didn't know. I asked a question with respect to this Rock Island car that appears on page 1 of Exhibit 28, and I asked him where this information came from over the telephone. Of course, I realize that he did not see the man at the other end, if he was on the receiving end, but they perhaps knew who they were talking with.

Mr. LE FORGEE. He, of necessity, learned that from information of the man who did the talking, not with any personal contact with the telephone, as I understand it.

By Com. PATTERSON:

Q. Who told you?

A. The man that received the information told me who he received it from.

Mr. BURCHMORE. Mr. Commissioner, those three cars—there are three cars on Exhibit 28, that are hot, it says so, and I notice they all went to the Pennsylvania.

Com. PATTERSON. That is right.

Mr. BURCHMORE. And they went for that 1:25 train of the Pennsylvania. Now, I would suggest that if the witness and Mr. Lovering have any idea different than what was testified yesterday as to the hot cars by the Pennsylvania man himself, they bring it out. I think the story has been told and we have no quarrel with it at all.

Com. PATTERSON. Well, Mr. Burwell testified this morn-

855 ing that there were a number of cars so far as the Staley Company was concerned. These were the only hot cars so far as the Pennsylvania was concerned.

Mr. BURCHMORE. They want to get them on their train and get them out, and we want them to, so far as that is concerned, of course.

Com. PATTERSON. But somebody has to give the instructions to the Wabash Railroad that these cars require special treatment.

Mr. BURCHMORE. Well, you may not give a hot car any special treatment.

Com. PATTERSON. That is why you call it hot.

Mr. BURCHMORE. It doesn't miss the train, that is all.

Com. PATTERSON. That is all, it doesn't miss the train. If there are any cars going to miss the train, it won't be this one.

Mr. BURCHMORE. It probably would be this one; it shouldn't be this one.

Com. PATTERSON. That is what you mean by a hot car; if any cars are going to miss the train, don't let it be this one.

By Mr. LOVERING:

Q. Mr. Booth, how many of those cars did you observe returned from the yard?

Mr. BURCHMORE. That is what he gave.

Mr. LOVERING. We are speaking of the cars taken out on deliveries and then brought back into the plant.

856 By Mr. LOVERING:

Q. I believe you stated that you checked the period September 22nd to September 30th, inclusive. I want to be certain of it.

A. That is correct. You asked me how many I observed. I did not observe all those, naturally, but the records showed that there were 30 cars returned from between September 22nd and September 30, 1939, both inclusive.

Q. Do you know anything about the contents of the cars?

A. Sixteen of them contained starch.

Q. Were charges assessed against those 30?

A. No, they are included in those 30. The 16 are included in the 30.

By Com. PATTERSON:

Q. Well, how can you tell by this Exhibit 28 the cars that were returned, or can you tell?

A. You can't tell, not from that.

Q. Are you going to have another exhibit that will show?

A. No, we don't have another exhibit.

Mr. BURCHMORE. We will agree that it is so, Mr. Commissioner. We will stipulate that those 30 cars in those days were returned, if he will stipulate that Staley paid or was supposed to have paid for every one of them $3.40.

Mr. LOVERING. That is my next question. That is right.

The WITNESS. I did not find any instance where there were not paid either $3.47 or $1.98. They decide what the charges
857 shall be. If it is marked "F. L.," or finish load, that is $1.98.

Mr. BURCHMORE. Under the tariff.

The WITNESS. The way it is interpreted, if it is marked "transfer," in other words, completely unloaded, then they charge $3.47.

Mr. BURCHMORE. Under the tariff.

By Mr. LOVERING:

Q. Mr. Booth, did you examine the records of the weighmaster at the scale house?

A. I did.

Q. Did you observe his manner of keeping those records?

A. Yes, sir.

Q. Can you state whether or not he records all cars which are weighed and the number of times weighed?

A. No; he does not record all of them.

Q. Will you please state under what circumstances he would not record a weighing?

A. Well, the coal cars that Mr. Wall testified about, that pick up coal. Those cars are actually weighed but no record is made in the book record of the weights.

Q. Any charge made for that service?

A. Yes; 35 cents.

By Mr. LE FORGEE:

Q. That is an intraplant movement?

A. That is an intraplant movement.

By Mr. LOVERING:

Q. What kind of a record does the weighmaster make on that, if any?

858 A. Well, he uses a regular scale ticket, puts it on the scale and marks the gross weight on there, and then uses a tare weight stencilled on the car for that particular commodity, pick up coal; and then that ticket, I understand, goes to the people who are to use the coal, that is, the division of the plant that uses the coal, for their information. There are other weighings that are not recorded, too. Do you want me to go ahead with them?

Q. I just—pardon me, I did not hear your last.

A. I say, there are other weighings that are not recorded in the book record. For instance, on empty tank cars that come in and are weighed and cleaned and reweighed, the initial light weighing would not be recorded in the book. The final light weighing, after the car had been cleaned, would be recorded in the book. Then, of course, the loaded weight when the car is loaded and moved out.

Q. What record is made of the first light weighing which the book does not show?

A. They do the same as on the coal cars; they use a scale ticket.

Q. Any charge made for those two light weighings?

A. No.

Q. Any charge made for the loaded out-bound weight?

A. No; not on the tank car.

Q. While you were here making this investigation, did
859 you copy from the weight record book?

A. I copied some information from that book; yes.

Mr. LOVERING. I ask, Mr. Commissioner, that this extract from the weight record book be given an appropriate number for identification.

Com. PATTERSON. That will take No. 29.

(Exhibit 29, Witness Booth, marked for identification.)

By Mr. LOVERING:

Q. Mr. Booth, where is this weight record book kept?

A. In the scale house we have been speaking of in the west end of the Staley plant.

Q. Is it handled by the one you understand to be the Staley weighmaster?

A. That is it.

Q. Have you observed him make his entries in that book?

A. Yes, sir.

Q. This memorandum sheet which I hand you, will you please identify it and state what it represents?

A. Well, to start with, I copied all of the records of cars weighed in September for cars ending in 00 to 20. That would be, of course, approximately one-fifth of the cars weighed during the month of September. Then I counted the others to see how many were weighed. Now, this exhibit does not include all of the cars ending in 00 to 20, it includes the ones ending in 01, 02, 04, 06, 10, 18, 19, and 20.

860 Q. The next to the last column is headed "Tare." Do you know whether or not the figures shown under this heading are the stencilled figures according to the light weight of the car as shown on the car itself, whether that is true in every case?

A. No, it is not true in lots of cases, I know. On these, for instance, an in-bound car of beans which were weighed, the tare weight would include the grain doors left in the car. On tank cars the tare weight would be the actual light weight determined on the scales.

Q. When the weighmaster makes that entry in that column, the weight he uses is not the stencilled weight, is that correct?

A. It frequently is not. In some instances it might be, but in most instances I would say it is not the stencilled weight.

Q. According to this sheet I. C. 155001 was light-weighed September 13th and September 15th, USTX 102 light-weighed twice during the month——

Mr. BURCHMORE. What about it?

By Mr. LOVERING:

Q. MONX 306, light-weighed three times. Did you make any inquiry or investigation to determine why the same car should be light-weighed more than once in a month?

A. Well, it is a practice to weigh the Staley tank cars, that is, the cars that are on lease—to weigh them light each time they come in.

Q. Then, if a tank car made two or three round trips a
861 month, is that the answer for it, it would be weighed light each time it comes in?

A. That is what we were told, and that is what our observation was, or my observation; what I was told.

Q. In connection with your duties, do you come in contact with any of the interchange rules of the Association of American Railroads?

A. I do.

Q. Do you have a copy of those rules with you?

A. I do.

Q. In general practice do railroad circles accept these rules issued by the Association of American Railroads as establishing or determining the procedure to be followed?

A. Yes, sir; I think that is the general practice accepted by everybody.

Q. What does your copy of the book show as to who issued it?

A. It says "Association of American Railroads, Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, Published by the Association of American Railroads."

Q. Is the A. E. Staley Manufacturing Company shown therein as a car owner who has executed the freight car interchange rules agreement?

862 A. They are.

Q. Is the Wabash also?

A. Yes, sir.

Q. How about the Baltimore & Ohio?

A. The Baltimore & Ohio, the Pennsylvania, Illinois Terminal, Illinois Central, all the roads serving Decatur are shown.

Q. Would you please read from Rule 2, the provision about accepting empty cars on interchange?

Mr. BURCHMORE. Now, may I see that book before the rule is read into the record? I don't know why—and if I act a little bit suspicious about it, I don't know why one witness wants to read a particular rule when the other witness was careful to

let me know that it was a little bit outside the scope of the Commission's service to find out what a rule was in a matter of importance in this case.

Com. PATTERSON. I am familiar with those rules myself. They are the rules of interchange adopted by the Association of American Railroads, I think, governing the interchange of freight and passenger cars between the parties to the agreement.

Mr. BURCHMORE. Yes.

Com. PATTERSON. Whoever they are.

Mr. BURCHMORE. But what is the significance of reading into this record from this Rule 2, which is rather long?

Com. PATTERSON. I don't know.

863 Mr. BURCHMORE. Well, before it is read, I would like to have the significance explained, if it is not taking unfair advantage of the Commission's counsel?

Com. PATTERSON. What is the purpose of introducing this rule?

Mr. LOVERING. The purpose is to show that these tank cars, under the rules of regulations, are required to have the light weight stencilled on them. I believe it will be shown that many of these Staley tank-cars do not have the light weight stencilled on them, and there is a possibility that the Commission might feel, when it comes to consider the evidence, that if the light weights were stencilled on they might not have given them so many light weighings when they come in. The only purpose, so far as this is concerned, is to show that the rules require the stencilled light weights shown.

Com. PATTERSON. What would be the penalty if they were not on?

Mr. LOVERING. I don't know that there is any penalty, except perhaps the connecting line roads can refuse to accept them if they wish to do so.

Com. PATTERSON. They did not refuse in this case. Were these cars delivered to some road?

The WITNESS. Yes, sir.

Com. PATTERSON. And they took them?

The WITNESS. Right along.

Com. PATTERSON. Well, what are we going to do about it?

864 Mr. LOVERING. Just a matter of information is all.

Com. PATTERSON. Off the record.

(Discussion outside the record.)

Mr. LOVERING. Is it taken out from the record?

Com. PATTERSON. Yes; so far as the rule is concerned; it is out, because I don't believe that it makes any difference. This is an interchange rule agreed to by members of the interchange agreement, which are most of the railroads, and, as the witness states, the Staley Company is a member of the Interchange agreement;

but I don't understand that these rules are mandatory upon the members.

Mr. LE FORGE. Not at all. Not only that, but how will they control the actions of the Interstate Commerce Commission or have any influence upon it?

Mr. LOVERING. I believe that is all. I would like to ask that these documents which have been marked for identification be received in evidence, Nos. 27, 28, and 29.

Com. PATTERSON. They are received and identified as No. ——

Mr. LOVERING. I think those are the numbers.

Com. PATTERSON. As 26 to 29.

Mr. LOVERING. 26, 27, 28, and 29.

(Exhibits 26 to 29, both inclusive, Witness Booth, received in evidence.)

Mr. BURCHMORE. Very briefly, Mr. Commissioner, I would like to ask a question or two.

865 Com. PATTERSON. Yes; are you through?

Mr. LOVERING. Yes.

Cross-examination by Mr. BURCHMORE:

Q. Mr. Booth, how many days were you here in and about the Staley plant and the Wabash terminals in Decatur?

A. Well, I testified September 25th to October 5th. That is ten week days.

Q. And that is the only times you were here?

A. That is correct, until I came up to attend this hearing.

Q. Have you ever returned to the plant since that time?

A. No, sir.

Q. And how long have you been here since your arrival on this visit in the City of Decatur?

A. I came in this week.

Q. Monday?

A. I came in Sunday.

Q. During those days have you been in consultation and conference and discussions with the other Bureau of Service men?

A. I had some discussions with them; yes, sir.

Q. And other Bureau of Service men have been in and about the plant, to your own personal knowledge—at least they have told you so—for some weeks, haven't they?

Mr. LOVERING. I don't believe he stated as to that.

Mr. BURCHMORE. Well, I am asking. This is cross-exam-

866 ination.

The WITNESS. I know what they told me.

By Mr. BURCHMORE:

Q. They told you they had?

A. I know Mr. Strong and Mr. Molano have been up here; just how long I don't know.

Q. Have you examined the conditions at any other corn refining or soyabean processing plant at any time in your career?

A. No.

Q. Well, have you inquired as to whether the conditions you observed in September and early October 1939, some months ago, still obtain——

A. Why——

Q. With regard to the matters concerning which you testified?

A. I have been told there have been some changes——

Com. PATTERSON. Don't testify as to what you have been told; testify as to what you know.

The WITNESS. Well, I don't know.

Mr. BURCHMORE. I asked if he inquired as to——

Mr. LOVERING. He has answered; he says he does not know.

Com. PATTERSON. He says he doesn't know.

By Mr. BURCHMORE:

Q. Now, just one thing I want to ask you, and it may have been a slip but I thought you said that on September 29th there were 87 grain cars released, and I may be wrong, but I think your Exhibit 26 deals with releases and that it shows 104 cars
867 were released. Now, if there is such a discrepancy, how do you explain it, and do you desire to correct anything?

A. I would like to count them before I can say, whether I count the same as you do.

Q. Well, I might be wrong because that is one thing, I don't count.

A. Well, I didn't just count in my head—I wanted to count them, but I didn't—those 87 were released on that first trick; now, the additional ones were released on the other two tricks. I may not have made that quite clear in the testimony, but you see I checked to see just what that one man did on the one trick, and he received 87 grain releases on the first trick on September 29th. Now, the two other men that follow him later on, would undoubtedly get some additional ones.

By Mr. LOVERING:

Q. What do you mean by the first trick?

A. From about 7:30 in the morning until 3:30 in the afternoon.

Q. One eight-hour period?

A. Yes. I am not positive about the exact hours, but that is approximate.

By Mr. BURCHMORE:

Q. Did you get that figure as a result of a request you made of the railroad to tell you the largest day they had, that was the largest day they told you?

A. No, sir; I got the impression that they run much larger than that later on. You see, the beans were not moving in great volume when we were here. The peak movement was after that.

868 Q. Do you happen to know whether the movement of 104 cars released on one day was a normal or average or a very heavy amount?

A. Well, I would only know in a very general way; I think some days would be less than that and my understanding is that some days it would be considerably higher than that.

Mr. BURCHMORE. That is all, Mr. Booth

Com. PATTERSON. That is all.

By Mr. STRASSER:

Q. Mr. Booth, these records, the record forms of which you have made copies here and which constitute your Exhibits 26, 27, and 28, they are the usual records found in a railroad yard office?

A. Yes, sir.

Q. And there is nothing unusual about them in that respect?

A. I would not say there is anything unusual. Ordinarily, they have a form for switching orders and here they do not have a regular form for switching orders, they use the cards or a copy of the grain check; but outside from that I don't know of anything out of the ordinary.

Q. They are the forms which are generally in general use for the purpose of the economic and expeditious handling of the work?

A. Something very similar to that. We have got one exception, about the switching instructions. They are generally put out on a regular form for that purpose.

869 Com. PATTERSON. Any more cross examination? (No response.) That is all.

(Witness excused.)

Com. PATTERSON. Well, let's take another witness.

DELBERT GARMAN was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Your name and occupation?

A. Delbert Garman, Service Agent, Interstate Commerce Commission.

Q. How long have you been employed in the Bureau of Service?

A. Since October 1922.

Q. Are you more or less familiar with the practices and customs of railroads in the handling of cars in and around terminals and industries?

A. I think so.

Q. Did you participate in the investigation made by the Bureau of Service into the operating conditions in and about the plant of the Staley Company?

A. I did.

Q. When did you take part in this investigation?

A. I began on Monday, September 25th.

Q. For about how long a period were your here?

A. Continuing until October 7th.

Q. During the course of that investigation, in connection
870 with your duties, did you at any time ride one of the engines doing the switching work in the Staley plant?

A. I did.

By Com. PATTERSON:

Q. What year was that?

A. 1939.

By Mr. LOVERING:

Q. On what date or dates?

A. September 30th.

Q. What was the engine number?

A. 531.

Q. What railroad?

A. The Wabash.

Q. Did you ride that engine for practically one eight-hour shift?

A. Very nearly the eight-hour shift. I rode them from——

Q. What period, if any, did you miss?

A. Well, I started riding at 8:35 in the morning and I rode it until they changed crews at 3:25.

Q. 3:25. First take these switch lists that you have got there, seven photostats, and I will ask you if you can identify them and state what they represent.

A. They are the switch orders or switch instructions given to the conductor of that particular locomotive during the time I was riding it.

Mr. LOVERING. Mr. Commissioner, I would like to ask that this be marked for identification and given an appropriate number.

871 Com. PATTERSON. Do you want both of them? 30 and 31.

(Exhibits 30 and 31, Witness Garman, marked for identification.)

Mr. BURCHMORE. 30 is the photostats?

Com. PATTERSON. Yes.

By Mr. LOVERING:

Q. Were the copies represented by these photostats made by you personally?

A. Yes, sir.

Q. Referring now to the fourth photostat, you will notice on the bottom of that column, that switch list, time 11:32 A. M., September 30th, the word "over" is on there. Is that part of the instructions to the switch crews?

A. No; that was a note I made to the effect that in reaching Building 15 A 20 they would have to pass by the location of 15 A 16.

Q. In other words, you had made some kind of notes for your own convenience or something like that on the reverse side, is that the explanation for that word being on there?

A. Yes, sir.

Q. Referring to the seventh photostat, the one timed at 11:35 A. M., the first item there is the signature "M. J. Parker, 5:30 P. M." What was the name of the conductor of the switch engine you were riding and had been all day?

A. Mr. Scholz.

Q. How do you spell that name?

872 A. S-h-o-l-z.

Q. Are you correct on that?

Mr. BURCHMORE. S-c-h-o-l-z.

The WITNESS. Perhaps it is S-c-h-o-l-z.

By Mr. LOVERING:

Q. Then will you explain to us how that item on that seventh photostate carries the signature of "M. J. Parker, 5:30 P. M."?

A. It is my understanding that Mr. Parker performed that work after—he was the conductor that relieved Conductor Scholz. It was after the period I was riding the engine that that was performed.

Q. Did you make a report covering your observations after this day you were riding the engine?

A. I did.

Q. What does that report show as to the movements made by that engine, 531?

Mr. BURCHMORE. Just a moment, before he goes into this report, I would like to have it established when he made this report and for what reason and to whom and what became of his report, if it is not to be confidential. Can't he testify about that?

Com. PATTERSON. Is this the report you are speaking about?

The WITNESS. This is the report.

Mr. BURCHMORE. Well, I would really like to know when he made the report and to whom he made it and for what

873 purpose he made it.

Mr. LOVERING. He has the report there with him, Mr. Commissioner. That is not being offered in evidence.

Mr. BURCHMORE. I still want that information.

Com. PATTERSON. He wants to know where this information came from, is that it?

Mr. BURCHMORE. No; he was asked if he made a report. I want to know when did he make a report, to whom he made a report, and for what purpose did he make a report. A man doesn't report to himself.

Mr. LOVERING. My question covered his riding the engine that day making observations, and then the next question was——

Com. PATTERSON. Well, is it a report that he made or are these notes that he made?

Mr. LOVERING. He has with him, as I understand it, notes or a report covering what he did.

Com. PATTERSON. Well, you don't make a report unless you make it to somebody.

Mr. BURCHMORE. Did he make a report or did he make notes which are here submitted as an exhibit?

Mr. LOVERING. This report is not offered as an exhibit.

Com. PATTERSON. The report is not offered as an exhibit.

Mr. LOVERING. No, sir.

Mr. BURCHMORE. Well, I don't know about that. This is being offered and I am going to object to this. If this well-
874 prepared memorandum, for the specific purpose of constituting evidence in this case, is offered, and the report is not offered, I want to see the report or else object to this.

Mr. LOVERING. The report is right here.

Mr. BURCHMORE. Well, where is it? Let's see it.

Exam. WEAVER. He is about to read it in the record, isn't he?

Mr. BURCHMORE. No.

Mr. LOVERING. I will ask a question about it.

Exam. WEAVER. Is he going to read it into the record?

Mr. LOVERING. Yes, I was going to ask him to read it into the record.

Exam. WEAVER. It is going to be read.

Mr. BURCHMORE. Well, my question was not answered.

Mr. LE FORGEE. Its competency can only be passed upon by counsel in the event we have an opportunity to see what it is about. It may be a treatise on the Constitution of the United States.

Mr. BURCHMORE. We wish to examine it. Here is a memorandum and before this is received I want to make an objection to it but I don't want to make a captious objection, I don't want to make one that is not necessary, in the interest of just protection of my clients.

Com. PATTERSON. Well, we won't receive it until we find out what it is about—at least, until we find out what it is
875 about.

Mr. LE FORGEE. If he reads it in the record, it will probably be in the record.

Com. PATTERSON. It will be in the record if he reads it in the record. Now, what does he propose to do, explain this exhibit or its purpose, or does he expect to read a statement in the record, or what?

Mr. LOVERING. I am going to ask him first, Mr. Commissioner, to read into the record the report he made that day based upon his observations that day of the various moves made by this engine.

Com. PATTERSON. The report he made to whom?

Mr. LOVERING. My understanding is it was made——

Mr. BURCHMORE. Well, can't he say?

Com. PATTERSON. Can't he say; yes, to whom?

The WITNESS. Surely, if you will tell me to answer it. I made the report to Mr. Wall because he was in charge of the crew here.

Com. PATTERSON. That is the report you made to Mr. Wall?

The WITNESS. Yes, sir.

Mr. BURCHMORE. And when?

The WITNESS. That evening.

Com. PATTERSON. Now, what do you propose to do, read the report in the record or offer it as an exhibit?

The WITNESS. No; I think it is to be read into the
876 record, we haven't an exhibit of it.

Mr. BURCHMORE. That is all right.

Mr. LE FORGEE. May I ask just one question?

By Mr. LE FORGEE:

Q. Was that report about which you have just spoken submitted to Mr. Wall here in Decatur before he left the city?

A. Yes, sir.

By Mr. BURCHMORE:

Q. That is the evening of September 30, 1939, I understand?

A. Yes.

Mr. BURCHMORE. Why, that is just what I have been aching to hear.

Mr. LE FORGEE. All right.

By Mr. LOVERING:

Q. Does this report show the various movements in the order in which the engine crew made them that day?

A. Yes, sir.

Q. Will you please read it?

A. "Engine 531, Conductor A. Scholz, weighed an empty gon at 8:35 A. M. for spotting on High Line to load scrap. After placing this car engine went in on coal dock track and switched out one gon behind one for spotting at Elevator "A" track, boiler house, for refuse loading.

By Mr. LE FORGEE:

Q. Pardon me just a moment. In the light of the suggestion that has been made, I would like to ask one more question in
877 relation to this document. Is that the original report that you made?

A. I beg your pardon?

Q. Is that the original report that you gave to Mr. Wall?

A. This one is; yes, sir.

Q. It hasn't been corrected or amended or changed in any way since the time you gave it to Mr. Wall?

A. It has not.

Q. All right, go ahead.

A. (Continuing:) "The car weighed was C&EI 94389. Shoved gon into clear on another track and backed in on No. 5 Bean Mill and pulled out three empty box and shoved them in on Bean Mill 4. Then headed in on Elevator "A" for six empty corn box cars, pulled out and held onto the empty cars and coupled to C&EI gon and shoved it to spot for loading of refuse.

"After spotting the gon for refuse, took the six empty corn box to No. 11-B for removal of grain doors; cut off from the empty corn box and moved light to 4-A. Pulled 15 loads out and shoved east on north lead and coupled to 25 other cars and left the track yard at 9:33 A. M. for the Wabash yard.

"There they shoved 22 cars in on Track 3 and the other 18 cars on Track 4 and then backed west and went through the cross-over track to send the locomotive to the roundhouse for servicing at 10:00 A. M.

"Engine came back from roundhouse at 10:35 A. M. and went to plant gate, where brakeman unlocked and opened gate on
878 coal track No. 1. Engine went in and pulled one hopper, Wabash 31358, loaded, and several empty flat bottom cars from No. 1 coal storage track, kicked gons in on south loop and shoved coal to scale and weighed it and then shoved it to 14-A to await later placement at germ meal pit.

"Engine then took empty cars from outside lead to No. 11 track for grain door removal, then switched out two cars for spotting on 15 track at 16 Building at 11:10 A. M.; then headed into the"——

By Mr. BURCHMORE:

Q. Tank track does that say?

A. I don't know the right——

Q. From here it looks like tank track.

A. Well, I don't think that is it.

(Continuing:) "Then headed into north lead and back——

Mr. BURCHMORE. What?

The WITNESS. That is wrong.

"Then headed into tank track and took ten flat bottom cars of coal; shoved east on north lead and backed into No. 1 storage track at 11:32 A. M. and cut off the coal. Engine next went into soya bean meal track, 13–A, waited five minutes for the removal of the loading spout from a set-back car on the east end, B&O 278678 and pulled out six cars and went to No. 11–B track switch, where set-back car 278678 was shunted onto No. 11–B and then the five cars of soya bean meal were taken to scale and weighed. The time of weighing was from 11:47 to 11:53
879 A. M.

"Engine next headed into coal dock track and took empty cars to south loop, where a loaded tank car was switched out and it and a box car was taken at 12:02 P. M. out of the plant yard to adjacent B&O interchange to make a 1:00 P. M. train."

By Mr. BURCHMORE:

Q. Does it say there "to make a 1:00 P. M. train"?

A. That is what I have here. That is what the conductor told me, he was going over there to make a 1:00 P. M. train for that delivery.

By Com. PATTERSON:

Q. You were with him?

A. I was with him.

Q. Then you know where he went?

A. Yes.

By Mr. BURCHMORE:

Q. Well, what is the purpose? It was before noon, you said, though?

A. I said they left—he left the yard at 12:02 to go over there, but this car was to go out on the 1:00 P. M. train.

By Com. PATTERSON:

Q. He made it all right?

A. He did. "This delivery required four minutes and the engine came back into the plant yard at 12:06 P. M. and shoved empty coal cars into south loop to clear. Next headed into Track 6–A that coal was standing on, switched out three flat bottoms

that were first out, then went in and coupled on two hopper
880 cars of coal and five flat bottom cars and backed out and shoved the eight flat bottoms on coal deck 9–A and spotted the two hoppers on coal dock 10–A.

"After spotting the coal, went to 16 Building and switched out one empty from behind two and set the two back to platform. Then coupled to the empty and coupled to another empty on feed track and took both of them to 6–A and went to lunch at 12:40 P. M.

"After lunch resumed work at 1:05 P. M. and took one empty to south loop, then held on to one and went to No. 11–B and coupled to first ten cars and took the empties and the set-back load, B&O 278678, to scale and weighed them. Weighed empties 1:16 P. M. to 1:25 P. M., then weighed set-back car and left scale at 1:27 P. M. and shoved to 3–A and left the ten empties and set-back car at 1:35 P. M.

"Held on to one and went to 4–A and pulled out twelve more, switched out one—switched one out, one back, one out, one back, one out, and two back, one out, one back, one out, and three back. Finished the switching"——

I want to correct that. I said twelve; that was 11–B.

"Finished the switching of these three cars at 1:49 P. M. and shoved empty to feed track and held on to a New York Central 153286 for 8–B; kicked it in on another track, backed on to 5–A for ten empty cars and shoved them to bean mill 4; coupled on
to 12 cars of beans to be weighed, shoved toward scale
881 and cut off all but New York Central 153286, which was then taken to 8–B.

"Then came back and headed toward scale, shoved back and weighed them from 2:25 P. M. to 2:40 P. M. Beans weighed were Southern 11373, B. & O. 27376, P. R. R. 34439, A. C. L. 50474, Wabash 80079, B. & O. 267001, I. C. 17304, R. I. 157877, D. & H. 19770, I. C. 159264, I. C. 17285, and S. P. 34396.

"Engine next moved through A lead to run around the beans, backed in and pulled them off of 7–A and backed them in at east end of bean elevator track. Cut off at 2:55 P. M. backed into 3–A and pulled eight loads out of 3–A and shoved them down the lead. Ran around and coupled to five empty cars on 2–A and took them to scale for weighing. Weighed L. & N. 10045, I. C. 34109, I. C. 159723, Southern 13310, N. Y. C. 130368. Began weighing these five cars at 3:16 P. M., finished at 3:22 P. M. Backed up to clear live rails, switch was thrown and moved forward to couple up these empty cars; pulled back to scale house and changed crews at 3:25 P. M. Conductor Parker and crew left scale house at 3:34, backed west and shoved the five empty cars into No. 11 for removal of grain doors."

By Mr. BURCHMORE:

Q. Is that the entire report that you made to Mr. Wall on that date, or is there some more to it?

A. There is just another paragraph that this conductor handled.

Q. Well, I would like to hear it.

A. "Supplemental: two 'hot' cars for P. R. R. 5:30 train.
882 Engine 1560 was sent from Wabash yard for these cars and came into plant yard at 4:08 P. M. Switched P. R. R. 98930 off 15-A-20 and moved by the scale to west end of plant yard and then east to 6-B-20, where it switched out D. & H. 17702 and left there at 4:45 P. M. for P. R. R. interchange.

"Engine moved to passenger station and backed in on second track south of the station and coupled to sixteen cars for the Illinois Central Railroad, pulled out and shoved to the I. C. interchange and then backed 'hot' cars on to P. R. R. interchange at 5:03 P. M., 55 minutes after entering Staley plant yard."

Mr. BURCHMORE. May I ask one favor?

Com. PATTERSON. Yes.

Mr. BURCHMORE. Would you read the first paragraph of the report again? It was short.

The WITNESS. "Engine 531, Conductor A. Scholz weighed an empty gon at 8:35 A. M. for spotting on High Line to load scrap. After placing this car"——

Mr. BURCHMORE. That is all I want. Thank you.

By Mr. LOVERING:

Q. Mr. Garman, referring to those mimeographed sheets which I just handed you, will you please identify them and state what they represent?

A. They are copies of the switch cards which had been given to the conductor during the time I was with him and on the right hand column it showed the——

Q. Just a moment please. Is that a photostat——
883 Com. PATTERSON. Which one are you talking about?

Mr. BURCHMORE. Exhibit 30.

Com. PATTERSON. Oh that is a photostated copy?

Mr. LOVERING. It is the mimeographed report, Mr. Commissioner, that I want to refer to now.

Com. PATTERSON. All right.

By Mr. LOVERING:

Q. Mr. Garman, those mimeographed sheets that you have just been handed, will you please state what they represent?

A. On the left-hand side it represents the instructions to the crews on the switch cards, that was given to them during the time that I was with them.

Q. Is that the same trip to which you have just been referring?
A. Yes, sir.
Q. Covered by the report you have just read?
A. Yes, sir.
Q. The left-hand column shows what?
A. The left-hand column shows the work instructions, instructions for the work to be performed.
Q. As contained on the switch card?
A. Yes, sir.
Q. What is on the right-hand side?
A. The right hand side shows what work was done.
Mr. LE FORGEE. That isn't competent, as a matter of fact, he might as well bring a written statement in here and tender
884 it as evidence. You can't do that.
Mr. BURCHMORE. I think, Mr. Commissioner, if I may ask?
Mr. LE FORGEE. All right.
Mr. BURCHMORE. Isn't this a rephrasing or a paraphrasing of the report he has just read?
Com. PATTERSON. It is a synopsis of the report.
Mr. LOVERING. This is supposed to represent, Mr. Commissioner, on the right-hand side, the work which the engine actually did in performing the work called for on the left-hand side.
Mr. LE FORGEE. You can't introduce evidence that way. I never heard of such a thing.
Mr. LOVERING. It simply presents the same thing in a more convenient form.
Mr. LE FORGEE. Convenient for whom? What opportunity is there in relation to the introduction——
Mr. LOVERING. Convenient for anyone who wants to look at it.
Mr. LE FORGEE. Or what opportunity is there to know the nature or character of the answer to be made before it is delivered? Offer it as an exhibit. Why don't you bring a written statement in here or an affidavit?
Mr. LOVERING. The written statement has been read into the record, of which this is the basis.
Com. PATTERSON. Mr. Le Forgee, it seems to me this Ex-
885 hibit 31 shows on the left side exactly what appears on Exhibit 30.
Mr. LE FORGEE. I am not objecting to that part of the instrument, if you please.
Com. PATTERSON. And what appears on the right-hand side of Exhibit 31 is extracts from the report he just read into the record.
Mr. LE FORGEE. Very well, it is a voluntary ex parte statement made by a party, which is entirely favorable to himself.
Com. PATTERSON. That is right.

Mr. LE FORGEE. Without any opportunity by anybody to say anything about it. To walk into any kind of a tribunal and offer a paper of that kind is going pretty far.

Mr. LOVERING. Mr. Commissioner, I simply offered it as a convenience portraying the information contained in that report against the instructions, and, if it isn't needed for that purpose, why, I am perfectly willing to withdraw it.

Com. PATTERSON. Well, it is all in the record anyway.

Mr. LE FORGEE. That may be true, Mr. Commissioner, but there is a proper way and an improper way of getting evidence in the record and it should not be submitted and entirely disregarded without any sort of attention to the commitment of the witness to what he is going to say.

Mr. BURCHMORE. Mr. Commissioner, I would like to offer a further objection, not to the receipt of this, but object to the situation the counsel for the Commission is putting us in,
886 and I think your ruling inadvertently put us in. I would like the witness to testify if he can, but I say on information and belief that this report, with other reports as taken by Mr. Wall, have been reworked and incorporated into his report, which we are not permitted to have, and the entire matter presented for the Commission's consideration in Washington who are in charge of this case. Now, this is a selected portion of the underlying report of Mr. Wall, and this part, which quite evidently would be adverse to Staley, comes into evidence where we can look at it and object in general to it, but other portions we are denied seeing.

Mr. LE FORGEE. Not only that, but this report was prepared and submitted to Mr. Wall before he made his report, and your Honor recalls very distinctly what his testimony was in relation to conditions out there and the satisfaction he expressed in relation to them.

Com. PATTERSON. Well, we won't take up any more time on this. This Exhibit 31 will go out.

Mr. LOVERING. Very well, the exhibit, then, which has been identified as No. 30 will be received in evidence?

Com. PATTERSON. It will be received and identified as Exhibit 30.

(Exhibit 30, Witness Garman, received in evidence.)

Mr. LOVERING. No further questions of this witness.

Cross-examination by Mr. BURCHMORE:

887 Q. This report that you read, Mr. Garman, is a report that you gave to Mr. Wall on the evening of September 30th?

A. Yes, sir.

Q. Do you know what use he made of that report, if any?

A. I do not.

Q. Do you know how long it was before you got it back?
A. No, I don't; I think it was probably a couple of months.
Q. He had it for perhaps a couple of months?
A. Yes.
Q. Do you know whether this report by you was the only report that Mr. Wall got from any of the other inspectors? Do you know?
A. I don't know.
Q. Was the report which you read here and which you submitted on September 30th to Mr. Wall, prepared for the purpose of his use in making his report?
A. I could not say. My instructions were to ride the engine and report on the operation.
Q. Well, now, the first question that was asked you was, are you more or less familiar with the practice and custom of railroads in handling cars in and around terminals?
A. Yes, sir.
Q. Did you make any report to Mr. Wall at all about the practice and customary conditions in and about this particular
888 terminal, other than what you have here read?
A. No, sir.
Q. And besides that?
A. No, sir; that was my report.
Q. You did not discuss things with him?
A. No, sir.
Q. He did not ask you for any information or suggestions or anything than this little report that you gave him?
A. That was all, I reported on the——
Q. And this report you made on September 30th. When did you leave here?
A. I left here on October 7th.
Q. When did Mr. Wall leave here?
A. October 8th.
Q. When did Mr. Wall leave here?
A. I think he left on the same date.
Q. And what did you do between September 30th and October 7th?
A. October 8th, I left here.
Q. Yes; were you idle or busy?
A. Well, I was around the plant.
Q. Getting information or sojourning?
A. I rode the engine one other day.
Q. I see; and have you been back in the plant at any time since?
A. No, I have not.

Q. So that the full extent of your report or participation
889 in the investigation at the Staley plant was the report to Mr. Wall which you here read?

A. Of the riding of the locomotive; yes.

Mr. BURCHMORE. That is all.

Com. PATTERSON. Any other cross-examination?

By Mr. STRASSER:

Q. Mr. Booth, this day you rode around with this switch crew, when was that?

A. Are you addressing a question to Mr. Booth?

Mr. BURCHMORE. Mr. Garman.

By Mr. STRASSER:

Q. Mr. Garman, on what day was it you rode the engine with the crew?

A. September 30, 1939, was the report I read.

Q. You have performed similar duties before at other places with other crews?

A. No; I never rode the engines for the purpose of observing operations.

Q. But you have observed switch crews operate before?

A. Oh, yes.

Q. And would you say this crew——

Com. PATTERSON. I think we can stipulate on the record that you do a good job on the Wabash, if that is what you want out of the witness.

Mr. STRASSER. I would like to show that we have done a little bit better than has been done before.

Com. PATTERSON. We can't go quite that far.

890 Mr. STRASSER. All right, that is all.

Mr. LOVERING. Just one question.

Re-direct examination by Mr. LOVERING:

Q. Counsel just asked you—I wasn't sure I caught the entire question—whether you were doing anything between September 30th and October 7th or 8th.

Mr. BURCHMORE. He was here during that time and he said he was busy.

The WITNESS. I went down to the plant each day.

By Mr. LOVERING:

Q. You were busy?

A. Certainly.

Q. Did your investigation that was made here, did it cease with this riding of the engine on September 30th?

A. No; I had to go back and get these reports and copies of these switch reports. They did not give me copies of them at the time they were doing the work.

Mr. BURCHMORE. I thought he was doing something, but this is all he reported.

Mr. LOVERING. I just want to clear up that he was doing something else?

Mr. BURCHMORE. Well, I did not ask him what, or where he was.

Mr. LOVERING. That is all.

(Witness excused.)

Com. PATTERSON. If there is no reason why we shouldn't,
891 we will come back at 7:30 and see if we can finish this job. How many more witnesses have you got?

Mr. LOVERING. Seven.

Mr. LE FORGEE. I think we can finish this tomorrow easily, your Honor.

Com. PATTERSON. I don't like to take any chance. Once in awhile we get a pretty good start but sometimes we don't do so well.

Mr. STRASSER. Wouldn't it be better to start early in the morning? My experience with night sessions is that we don't get anywhere.

Mr. BURCHMORE. May we have a little conference off the record?

Com. PATTERSON. Yes.

(Discussion outside the record.)

Com. PATTERSON. We will take a recess until nine o'clock tomorrow morning.

(At 6:10 o'clock p. m., Thursday, April 25, 1940, an adjournment was taken to Friday, April 26, 1940, at 9:00 o'clock a. m.)

892–893 ORLANDO HOTEL, *Decatur, Illinois,*
Friday, April 26, 1940.

Met, pursuant to adjournment at 9:00 o'clock a. m.

Before W. J. PATTERSON, Commissioner; F. M. WEAVER, Examiner.

Appearances: As heretofore noted.

PROCEEDINGS

Com. PATTERSON. Gentlemen, I have a note here from Mr. Wall, I think, in response to an inqury from Mr. Burchmore as to the dates he was in Decatur. That was from September 25th until October 7th. That was the information you desired?

Mr. BURCHMORE. Yes; 1939?
Com. PATTERSON. 1939.
Mr. BURCHMORE. Thank you.
Com. PATTERSON. All right, Mr. Lovering.

JOHN L. STRONG, was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Will you please state your name and occupation?
A. John L. Strong, Service Agent, Interstate Commerce Commission.
894 Q. How long have you been employed in that capacity?
A. Since 7/10/1938.
Q. Have you had any previous experience in connection with railroads?
A. Yes, sir.
Com. PATTERSON. Do you wish to have Mr. Strong qualified?
Mr. BURCHMORE. Not unless it appears later that it is desirable.
Com. PATTERSON. All right, go ahead.
Mr. LOVERING. The only thought I had in mind was that on account of his recent connection with the Bureau I would bring out his previous experience.
Mr. BURCHMORE. I know the Service Department of the Commission only employs men who are experienced.
The WITNESS. I have had approximately 23 years experience in various railroads—
Mr. LOVERING. That is enough.
The WITNESS. Nine of which was spent——
Mr. LOVERING. That is enough.
The WITNESS. In yard employment service, the duties of a switch man all the way to a train man.
Mr. LOVERING. That is enough.

By Mr. LOVERING:

Q. Did you, at the direction of the Interstate Commerce Commission participate in an investigation of operating prac-
895 tices in and around the plant of the Staley Manufacturing Company at Decatur?
A. Yes, sir.
Q. When did you take part in this investigation at Decatur?
A. I took part in that investigation from September 25, 1939, to October 7th, and I was here a couple of days in December of 1939. This last time I arrived in Decatur on March 25th and I am here yet.

Q. During the course of your work in September and October of 1939, did you obtain information from certain of the records of the Wabash Railway for the purpose of observing typical movements of cars in and about the plant?

A. I did.

Q. This mimeographed table, three sheets, which I have handed you, will you please state if you can identify it and what it represents?

A. I can. This is exhibit or table illustrating the movement of cars loaded with corn moving from the Wabash-Burwell Yard to Elevator "A" for unloading, and the return movement of the empties from the elevator.

Q. Does it contain information copied from the records of the Wabash Railway?

A. It does.

Q. Was that information copied from any other records?

A. It was pertaining to the point of origin and destination.

Q. Did you get that information from the records of
896 the Wabash or from some other source?

A. From the Wabash, all of it from the Wabash, but I mean, not from the yard.

Mr. LOVERING. Mr. Commissioner, I would like to ask that that be marked for identification and given an appropriate number as an exhibit.

Com. PATTERSON. It will be received and identified as Exhibit 31.

(Exhibit 31, Witness Strong, marked for identification.)

Mr. BURCHMORE. Pardon me, just so that I may understand what you said, I understand that the witness has said that this paper represents really a compilation by him of information that he has taken from various sources and records, not all from the face of one record.

Com. PATTERSON. That is right.

The WITNESS. I will explain that to him if you will allow me to.

Com. PATTERSON. That is what he said.

The WITNESS. The switching——

Mr. BURCHMORE. No, no, I did not ask for any explanation.

The WITNESS. I will——

Mr. BURCHMORE. Don't until you are asked to. We want to get away from here by six o'clock or earlier, if possible.

Mr. LOVERING. Off the record.

(Discussion outside the record.)

897 Com. PATTERSON. Go ahead. On the record.

By Mr. LOVERING:

Q. Will you please state briefly how these cars of corn moved as shown by the exhibit?

A. These cars moved from No. 2 track in the Wabash-Burwell Yard to Elevator "A" for unloading, and from Elevator "A" to track 11-B for removing the grain doors; from 11-B to the Wabash Yard for disposition.

Q. Referring specifically to the first car on the table, this car shown in the second line as moving to track B to be loaded with grain doors; in your opinion, is that an error in there?

A. That should read "to remove grain doors."

Q. To remove grain doors?

A. Yes, sir.

Q. On what dates did these cars move into the plant?

A. The first one moved in on September 28th; the remainder moved in on September 29th, 1939.

Mr. BURCHMORE. Just a moment, that last correction, it is of some importance to us, I don't believe is a correction. I want him to be sure. May I just point that the next entry seems to indicate—and it is a thing of some importance to us—would seem to indicate that the next movement of this car was of a car loaded full with grain doors that were being taken out for other use, and if so, the movement was to load and not to remove.

The WITNESS. No; the indication on the sheet is that it
898 moved with corn to Elevator "A" and it moved from Elevator "A" to track 11-B for the removal of grain doors. That is the first car.

By Mr. BURCHMORE:

Q. Then what is the next movement for? Why would it move full of grain doors?

A. It wasn't full, I don't imagine. Of course, we don't know.

Q. But we do, and you know frequently they are full of grain doors. This is a recreation order for grain doors of the Wabash, isn't it?

By Mr. LOVERING:

Q. Mr. Strong, do you have your working sheet there?

A. I have.

Q. Look at the card and see if it is an error in taking it off the working sheet or whether the working sheet itself shows the same information.

Com. PATTERSON. Just a minute, the entry here indicates that the car went to Elevator "B" on the 28th to load grain doors, and it came from 11-B with grain doors to the Wabash classification yard.

Mr. BURCHMORE. Yes.

The WITNESS. That is really the record. Mr. Lovering asked the question—it moved over there—grain doors are first unloaded

and then loaded up, and the original record I took does state that it went there to unload grain doors and load grain doors.

899 Mr. LOVERING. We will let it stand that way. Let it stand in accordance with the original record.

Mr. BURCHMORE. Then I ask the witness not to say, I imagine this and I imagine that, because I think he knows that the Wabash Railroad practice there, for their convenience and for the economy of all railroads, is the storing and repairing of grain doors, not a matter of our concern at all, and then shipping out full carloads of grain doors for the railroads' use at the grain fields.

Mr. LOVERING. It was my understanding that that was an error, but if that is the way the original record read, we want it as shown on the original exhibit.

The WITNESS. It is an error on this. That is the reason we made the correction.

Mr. LOVERING. All right. One thing I want to point out right now; in getting this information we wish to show the typical movements from the leased tracks in the Wabash-Burwell Yard. Now, all cars involved in there, a subsequent check shows, came from state destinations. They are simply offered to illustrate the typical movements.

Mr. LE FORGEE. Mr. Lovering, may I be pardoned for interrupting you? In this schedule you have presented there appears the words "from" and "to." That is for the purpose of disclosing the movement of that particular car, isn't it?

Mr. LOVERING. That is my understanding.

900 Mr. LE FORGEE. Then I submit, as a matter of brevity, that the rule is pretty well established that where an exhibit is offered, if it is competent evidence for its accuracy and its lack it becomes the evidence in itself, and I know of no rule which authorizes any witness, in any tribunal which has had the misfortune of having me appear, where they have allowed or required or it has been found convenient to have a witness read into the record a thing which is perfectly apparent from the face of the instrument itself. In other words, if your Honor please, if the instrument is correct and accurate and competent evidence, there it is. If it isn't competent evidence, why then it should not be admitted. It seems that we are wasting a lot of time in a recital here of simply what appears on the face of this instrument, when the rules clearly indicate that the court will determine in relation to those movements.

Com. PATTERSON. All the information contained on this sheet is information taken from the records of the Wabash Railroad?

Mr. LOVERING. That is my understanding of it; yes, sir.

Com. PATTERSON. I see no harm in accepting the exhibit as a matter of information, for whatever it is worth.

Mr. BURCHMORE. No.

Com. PATTERSON. I want to get this particular item straightened out in my own mind. Does the record show that this
901 Wabash car 159138, loaded with corn, moved from Burwell No. 2 Yard to Elevator "A" on the 28th of September, where it was unloaded?

The WITNESS. That is correct.

Com. PATTERSON. And the empty moved from Elevator "A" to 11–B, whatever that is, on the same day to load grain doors?

The WITNESS. To unload and then that they loaded, according to the original record. That is the first car.

Com. PATTERSON. Well, it was unloaded?

The WITNESS. Yes, sir.

Com. PATTERSON. At Elevator "A" and it was moved to track 11–B?

Mr. BURCHMORE. That is right.

The WITNESS. To load grain doors, that is true; to unload first and then they did load.

Com. PATTERSON. Well, I had the car loaded before I started it over to 11–B.

The WITNESS. Yes.

Mr. BURCHMORE. That is right.

Com. PATTERSON. Where it was loaded with grain doors, and, when it was loaded with grain doors, it moved from track 11–B to the Wabash classification yard on the 30th of September for I. C. delivery?

The WITNESS. That is true.

By Com. PATTERSON:

Q. Is that what the record shows?

A. That is what the record shows. The record shows all
902 cars loaded with grain from——

Com. PATTERSON. Well, that is all.

Mr. BURCHMORE. Mr. Commissioner, off the record.

(Discussion outside the record.)

By Com. PATTERSON:

Q. How do you want this to read, as it is submitted, or do you want it changed?

A. It says here "remove grain doors." Then there is a second item down there "to load with grain doors."

By Com. PATTERSON:

Q. That is right.

A. Which means after the grain doors were unloaded which came in with grain.

Mr. LE FORGEE. I submit to the Commissioner that we can save half an hour to an hour by taking this for what it is worth and

stop all of this thing of reading into the record, which consumes an indeterminable space of time and which, in my judgment, is improper and incompetent. It is simply repeating what appears in the exhibit which is being offered.

Com. PATTERSON. All right, go ahead, Mr. Lovering, and examine the witness on the statement without repeating the statement in the record.

Mr. LOVERING. I beg your pardon, I did not hear that.

Com. PATTERSON. Have you any examination of the witness?

Mr. LOVERING. Yes, sir; I have just asked him several questions as to what move that illustrates, and to call attention to what I thought was an error on that particular car.

903 Com. PATTERSON. Now, I would like to know for my information what that track 11–B is—where that track 11–B is.

The WITNESS. May I tell you?

Com. PATTERSON. Yes.

The WITNESS. That is a track where they unload grain doors. They use this track 10 that runs alongside of it; they take the doors out at 11 and pile them up on 10. 10 is not in use. And then they are loaded up again from that 10 track for use.

Mr. BURCHMORE. May I interpose a short question there to complete that showing?

Com. PATTERSON. Yes.

By Mr. BURCHMORE:

Q. Those grain doors are reclaimed by a joint committee—a joint agency of the railroads at that point, are they not?

A. That is my understanding.

Q. And they are loaded into freight cars in full carloads of grain doors by the joint railroad reclamation bureau employees?

A. That is my understanding.

Q. And then they ship those doors out to country stations or wherever the railroads have requisitions for grain doors?

A. That is right.

Q. And this track 11–B is a track of the joint employees of the railroads, grain-door reclamation yard, which Staley allows them to use and they do use as a reclamation yard and as a

904 distributing center?

A. That is my understanding.

Mr. BURCHMORE. We call the Commissioner's attention to the fact of the Board of Trade Grain Door case where that practice is generally described.

Com. PATTERSON. As I understand it, this statement that is offered, Exhibit 31, shows the movement of cars loaded with corn

moving from the Burwell Yard on track No. 2 to Elevator "A," where they are unloaded and the cars taken from Elevator "A" to track 11–B, where they are loaded with grain doors; in some instances, unloaded with grain doors. Then the car is switched to the Wabash classification yard for delivery to the various railroads who are parties to this grain door agreement, is that correct?

The WITNESS. May I explain, Mr. Commissioner, that all the cars that are unloaded, that car will speak——

Mr. BURCHMORE. Well, is that correct, Mr. Commissioner?

Com. PATTERSON. Are some of the cars——

Mr. BURCHMORE. Pardon me, couldn't he answer that yes or no?

Com. PATTERSON. Yes.

The WITNESS. No, you are off on that, on part of your question. I will have to explain it all or I can't explain. Yes or no will not answer the question. That car there first moved to the elevator, where it was unloaded. That leaves the grain doors in the car which protected the grain; it was taken to 11–B, those doors unloaded, and then that particular car loaded up with grain doors which went out. That don't mean that all cars which you are unloading——

Com. PATTERSON. No; I realize that. It went out to the Wabash classification yard later on for an IC delivery?

The WITNESS. That is true.

By Com. PATTERSON:

Q. Now, the next car, it appears, instead of loading grain doors, they unloaded the grain doors that were in the car, which were probably just the grain doors that protect the grain, in that particular car?

A. That is right.

Q. And then the car went empty over to the Wabash classification yard for Pennsylvania delivery?

A. That is right.

Q. Now, with the exception of the first car—the first car went out loaded with grain doors to an IC delivery and all subsequent cars on this list went over to this track 11–B, where the grain doors were taken out, and the empties went over to the Wabash classification yard for delivery, perhaps, to the line that brought the load in, is that correct?

A. That is true.

Com. PATTERSON. I think that is all. That will be accepted and identified as Exhibit 31.

(Exhibit 31, Witness Strong, marked for identification.)

906 By Mr. LOVERING:

Q. Mr. Strong, I hand you a mimeographed table consisting of four sheets and ask you to identify it and state what it represents.

A. I do. This is an exhibit or table which illustrates the movement of cars of corn going from the Wabash-Burwell Yard, Track No. 4, to Elevator "C" for unloading, and the return movement of the empties from the elevator.

Q. Was this information obtained from the records of the Wabash Railway?

A. It was.

Mr. LOVERING. I would like, Mr. Commissioner, to have that marked for identification, and given the next number.

Com. PATTERSON. That will be identified as Exhibit 32.

(Exhibit 32, Witness Strong, marked for identification.)

By Mr. LOVERING:

Q. What does this table show with respect to the movement of these loads of corn?

A. It indicates that there were no services performed by the Wabash Railroad other than to move cars from the Burwell Yard to Elevator "C," and the return movement of the empties.

Q. On what dates did they move?

A. Some of them moved on September 26th, some of them on September 29th and September 30th, 1939.

Mr. LOVERING. Mr. Commissioner, the same table holds true with respect to—on these cars as with respect to the previous statement; the cars originated in Illinois, and the exhibit
907 is offered simply to show the typical, common movement of the cars in the Burwell Yard.

Mr. BURCHMORE. That is all right, if I might ask this one question:

By Mr. BURCHMORE:

Q. I understand this exhibit is not a copy of one record but it is a compilation that you made from different pages of different records?

A. The movements——

Q. Can you just say that?

Com. PATTERSON. Say yes or no.

The WITNESS. I don't believe yes or no, Mr. Commissioner, answers it. I don't believe it is a fair answer.

By Com. PATTERSON:

Q. What is a fair answer?

A. Well, I will say that the movements of those cars were taken from the switch list issued directing the movement of them, or

the yard records showing that, and the other, as to the point of origin, was taken from the station agent's records of the Wabash.

Com. PATTERSON. That could have been answered by yes.

Mr. BURCHMORE. That is right.

By Mr. LE FORGEE:

Q. It is a compilation made by you from the books of the Wabash?

A. That is true.

Mr. LE FORGEE. That would have been very easy to say yes.

Com. PATTERSON. That will be received and identified as
908 Exhibit 32.

(Exhibit 32, Witness Strong, marked for identification.)

By Mr. LOVERING:

Q. Mr. Strong, I hand you a mimeographed table of nine sheets and will ask you to identify it and state what it represents.

A. This is an exhibit or table showing the movement of coal into the Burwell plant—I mean into the Staley plant from the Burwell Yard, and the return movement of the empties out after the coal is unloaded at either the coal dock or coalyard.

Q. Was the information on these mimeographed sheets taken from the records of the Wabash Railway?

A. It was.

Mr. LOVERING. Mr. Commissioner, I would like to ask that it be marked for identification and given an appropriate number.

Com. PATTERSON. It may be identified as Exhibit No. 33.

(Exhibit 33, Witness Strong, marked for identification.)

Mr. LE FORGEE. I would like to ask one question.

Com. PATTERSON. All right.

By Mr. LE FORGEE:

Q. In the right hand column of that sheet I notice the words "Purpose of switch." Is that a phrase that was coined by you?

A. It was.

Q. You didn't get that from the books of the Wabash in any way, did you?

A. That is a phrase I use to describe——

909 Q. Please answer my question.

A. No; that is my own phrase; yes.

Q. And you did not get it from any of the records of the Staley Company either, did you?

A. I did not.

Mr. LE FORGEE. All right.

Mr. BURCHMORE. May I just ask the same question on this:

By Mr. BURCHMORE:

Q. I understand this Exhibit 33 you compiled by taking entries on different pages of different books or records and assembled them as to each car?

A. We took it from the switch list.

Q. But you took different switch lists of different dates and combined the information into one item here, did you not?

A. We took the movement——

By Com. PATTERSON:

Q. Can you answer that by yes or no?

A. It can't be done, Mr. Commissioner.

Com. PATTERSON. Well, the previous question he asked you could have been answered by yes or no, and after a five minute explanation you finally answered it by saying yes.

The WITNESS. It is——

Com. PATTERSON. Now, the purpose of this——

The WITNESS. It is different movements, yes—it is different switch lists but a continuation of the movement.

Mr. BURCHMORE. Sure, that is all right, I think it is clear.

910 Com. PATTERSON. Yes, what you did was take the car and trace the movement through from Burwell No. 1 yard until it reached the classification yard empty, the classification yard of the Wabash Railroad empty, I take it.

Mr. BURCHMORE. Yes, but I am only getting at one little thing and we are trying to save cross-examination. As I take it, this first car, Wabash 36015, from one record he found—from one card or page——

Com. PATTERSON. Switch list.

Mr. BURCHMORE. He found the data which is shown on the first line here, and from another page or card or ticket he found what is on the second line. He picked out the third line from another and the fourth from another.

The WITNESS. That is correct.

Mr. BURCHMORE. But nowhere did he find what is on these four lines on one sheet of paper.

Com. PATTERSON. That is right.

By Mr. LOVERING:

Q. Mr. Strong, turning to the first page of this exhibit, will you please state what it indicates, as to the movements made by the first four cars?

Mr. LE FORGEE. Doesn't that appear on the face of the exhibit?

The WITNESS. The first four cars on the first page of this exhibit moved from the Wabash-Burwell Yard, Track No. 1, on September 27th, and track 6-A, which is a nearby track, to

911 the coal dock, track 10-A.

Mr. LE FORGEE. I submit to the Commissioner——

The WITNESS. On September 28th it moved from track 6–A to 10–A for unloading. On September 28th it moved from 10–A to the south loop or assembly at the south loop, and the same date went out to the Wabash classification yard.

By Mr. LE FORGEE:

Q. Pardon me just a moment. In your answer to the question you were simply reading from that exhibit, were you not?

A. That is true.

Mr. LE FORGEE. All of which appears on the face of the exhibit itself.

Com. PATTERSON. That is right. Now, I would like to have some—I would like a question answered for my own information unless you are going to bring it out. Where is track 6–A and track 10–A and the track known as the south loop?

Mr. LOVERING. Those tracks will be brought out, Mr. Commissioner, by a subsequent witness. I don't know whether this witness can answer that question or not, but a subsequent witness will be put on who can.

Com. PATTERSON. This witness did not observe this movement?

The WITNESS. I can tell you where they are, if you wish, without looking at the blue print.

Com. PATTERSON. All right, where are they?

The WITNESS. Track 10–A is one of the unloading tracks
912 at the coal dock, the one with the hopper on it. Track 6–A—the tracks start numbering from the north side of the yard toward the center—that is down near the scale house, over to the scale track. The first one is the lead. They call that, I believe, No. 1 track. The next one is No. 2, 3, 4, 5, and 6.

By Com. PATTERSON:

Q. I want to know where track 6–A is. Track No. 6–A is one of the tracks in the Burwell Yard?

A. It is—not in the Burwell Yard, the Staley yard.

Q. I mean, Staley.

A. The Staley yard, down near the scale house.

By Mr. BURCHMORE:

Q. Down at the west end of the plant?

A. Yes.

By Com. PATTERSON:

Q. That is shown on Exhibit 2? Is that identified on Exhibit 2?

A. It is, yes.

Mr. LOVERING. No, Mr. Commissioner, I don't think track 6–A has been marked on Exhibit 2, and it is for that purpose that I

want to ask a subsequent witness to tell the Commissioner where those tracks are.

By Com. PATTERSON:

Q. Where is this south loop track?

A. The south loop track is a track at the end of 1 and 2 Burwell track, used for the purpose of switching those two tracks and leaving cars that are assembled there.

Q. I don't care what the purpose of them are, just where they are.

913 A. It is at the end of 1 and 2 Burwell and that is near the south side of the scale house, yard office and scale house.

By Mr. BURCHMORE:

Q. Towards the west end of the plant?

A. That is true.

By Com. PATTERSON:

Q. Where is the track, coal yard No. 1?

A. That is west of the scale house. It is in the west end of the plant.

Q. You have another track marked here as track 9-A. I presume that is adjoining track 10-A?

A. That is a track at the coal dock from which——

Q. Well, is that parallel and adjoining track 10-A?

A. It is parallel with 10-A; yes, sir.

Q. And further over here you have a track marked "tank track No. 1." Is that identified on any exhibit?

A. It is, I think——

Mr. LOVERING. It is not on any exhibit so far in the record, I don't think. A subsequent witness will——

Mr. BURCHMORE. Well, if he knows——

Com. PATTERSON. Yes; if you know.

The WITNESS. I really——

Com. PATTERSON. Yes or no.

The WITNESS. I will say no; I am not sure about it.

By Mr. LOVERING:

Q. On what date were these cars moved in the plant?

Mr. BURCHMORE. That shows on the exhibit.

914 The WITNESS. They moved into the plant September 24th to October 1st, inclusive.

Mr. BURCHMORE. Is this the next exhibit?

Com. PATTERSON. No; he is testifying from Exhibit 33.

Mr. LOVERING. He is speaking now of Exhibit 33.

By Mr. LOVERING:

Q. That is a movement of coal?

A. Yes, sir; that is right.

By Mr. BURCHMORE:

Q. From what dates was that?

A. September 27th, to October 1st, inclusive, both dates included—from September 24th.

Q. Where do you see that?

A. Wait a minute; no. That is the 27th, September 27th to October 1st, inclusive.

Mr. LOVERING. Now, Mr. Commissioner, this again is in the situation of traffic which originates within the state, simply offered again to show the common type of movement within the plant.

Mr. BURCHMORE. That is No. 33?

Mr. LOVERING. That is right.

Mr. BURCHMORE. All right.

Com. PATTERSON. The exhibit will be received as No. 33.

(Exhibit 33, Witness Strong, marked for identification.)

By Mr. LOVERING:

Q. Mr. Strong, I hand you a mimeographed table of eleven sheets and ask you if you can identify it and state what it represents?

915 A. I do. This table represents the movement of tank cars in and about the Staley plant.

Q. Was the information shown on this table copied from records of the Wabash Railway?

A. It was.

Mr. LOVERING. Mr. Commissioner, I would like to ask that it be given an appropriate number for identification.

Com. PATTERSON. It will be identified as Exhibit 34.

(Exhibit 34, Witness Strong, marked for identification.)

Mr. BURCHMORE. Just a moment. He said "copied." I suppose he means compiled and assembled by him from various sheets and cars and books, and so forth, which he compiled?

The WITNESS. Just the same as the other record; yes.

By Mr. BURCHMORE:

Q. And the "purpose of switch" in the last column, the words "purpose of switch"——

A. Is my own.

Q. Is your own language and not from any record?

A. That is true.

By Mr. LOVERING:

Q. Mr. Strong, turn to page 3. Will you please state as to whether or not those movements illustrated there are more or less along the lines of those that you may have observed when you were in the plant?

A. That is true.

Mr. LOVERING. Mr. Commissioner, on account of economy of time, I am not going to ask the witness to read through
916 any of these particular movements. He has stated where he obtained the information and I think perhaps the exhibit will speak for itself.

By Mr. LOVERING:

Q. Just one more question I will ask and that will be all, Mr. Strong. Did you make any investigation to determine the points of origin and destination of these cars?

A. I did.

Q. Can you tell us which, if any, of these cars moved entirely from one state destination——

A. I can.

Q. Pardon me, wait a minute, wait until I correct my question—moved from a state point of origin to a state destination?

A. From a state origin to a state destination?

Q. That is right.

A. I find seven of those.

Q. State what they were, please.

A. AESX 26 on page 1, AESX 93 on page 2, AESX 64 on page 5.

By Com. PATTERSON:

Q. Where is that information shown on this table?

A. I am just picking them out, Mr. Commissioner.

Mr. LOVERING. They are not shown on—I have had them checked subsequently.

Mr. BURCHMORE. We are glad to have the information.

The WITNESS. GATX 28508 on page 8, SHPX 9486 and
917 GATX 26396 on page 9, USTX——

Mr. BURCHMORE. Wait, give us the page first and then the numbers.

The WITNESS. All right.

Mr. BURCHMORE. Just this one on page 9.

The WITNESS. SHPX 9486.

Mr. BURCHMORE. Yes.

The WITNESS. GATX 26396, page 10; USTX 102.

Mr. BURCHMORE. Thank you.

Com. PATTERSON. That will be received and identified as Exhibit 34.

By Mr. LOVERING:

Q. Mr. Strong, during the course of your investigations, did you ascertain whether or not any tracks were being used for the holding of cars?

A. I did.

Q. Were these cars loaded or empty?

A. They were loaded.

Q. Were they used more or less every day for that purpose of were they used for other purposes?

A. I couldn't say as to whether they were used for other purposes or not. I know that that is where no-bill cars from the plant are placed as a rule.

Q. Did you find that there were certain tracks there used more or less every day for the purpose of holding loaded cars?

A. I did.

918 Q. Where were these tracks located?

A. These tracks were located in the—outside the fence, the Wabash yard, opposite the west end of the Staley plant, commonly called the Wabash storage yard.

Q. Was it part of your duties to have charge of or supervision of the making of a check of these tracks for the purpose of ascertaining how long cars were held there?

A. It was.

Q. When did you begin this work?

A. April 16, 1940.

Q. Will you please state what you did in this connection on April 16th.

A. The cars were checked on some of the hold tracks and then I went to the yard office in the Staley scale house and determined, from consulting the yard checks, the daily yard checks, the first day, the date of the first yard check, on which each car appeared. I then examined the intervening track checks for each day up to and including—or up to April 16th, including the 16th, and after that date up to April 20th kept check on the cars as they went out by consulting the yard checks on the out-bound cars in the yard.

Q. Was a subsequent record made of the dates on which these cars were turned over to the various railroads from the hold track?

A. It was.

Q. Was that data assembled so as to enable you to state

919 when certain cars on the hold tracks——

A. It was.

Q. Enable you to state when certain cars were on the hold tracks and how many days they were there?

A. That is true.

Q. How many cars are covered by that data?

A. 22 cars.

Q. What was the minimum number of days that these cars were on the hold tracks?

A. Four days.

Mr. BURCHMORE. The minimum number of days, four?

Mr. LOVERING. Of those 22.

The WITNESS. Of those 22 cars, Mr. Burchmore.

Mr. BURCHMORE. The witness is reading from a typewritten memoranda. I would like to know—have him tell us about it before he reads any further.

By Com. PATTERSON:

Q. Is that notation that you have to refresh your memory?

A. That is just—I can read from this, if you so desire. It will make it quicker, though.

Mr. BURCHMORE. I am just inquiring what he is reading from here.

Mr. LE FORGEE. As a matter of fact, he hasn't any right to read from anything.

The WITNESS. All right, it will take us a little longer.

920 Mr. LE FORGEE. What?

The WITNESS. I will take it from the sheet.

Mr. BURCHMORE. I am trying to save time and controversy here and I do not want to insist on any technical rules with respect to the right of the witness to read from a prepared memorandum without being exhibited to counsel or anything. We would be glad to see what he is reading from.

By Com. PATTERSON:

Q. What are the notes you are reading from? What are they?

(Document referred to handed to the Commissioner.)

Q. Well, I know. What are they? I don't want them.

A. This is just notes for the information desired in my answer.

Q. Are those notes that you made at the time of your investigation or subsequent to that?

A. Subsequent, after the investigation.

Q. Go ahead.

Com. PATTERSON. They are notes that he made either at the time he made the investigation or subsequent thereto, for the purpose of refreshing his own memory.

By Mr. BURCHMORE:

Q. Well, is it something that you yourself wrote? It is a typewritten memorandum that you have been looking at.

A. I wrote it myself; yes, sir.

Q. Preparatory to testifying here?

A. That is right.

921 Mr. BURCHMORE. That is all.

By Mr. LOVERING:

Q. I believe you stated that the cars you referred to, the 22 cars you referred to, the minimum number of days they were on this hold track was four days?

A. That is true.

Q. Will you state what kind of cars these included?

A. They were box cars and tank cars.

Q. Of these 22 cars how many were subsequently turned over to carriers for outbound movement on or before April 20th?

A. 14.

Q. Were the other 8 still on hand, as of April 20th?

A. They were.

Q. And when did you cease following these cars on that——

A. April 20th.

Mr. BURCHMORE. Now, this last few minutes you have been looking at a yellow sheet which seems to be a list of cars, is that right?

Mr. LOVERING. He has a complete list of cars; yes.

By Mr. BURCHMORE:

Q. That is the original memorandum you made at the time.

A. That is true.

Mr. BURCHMORE. I wonder if we could see that. There is nothing private about it.

Mr. LOVERING. That is data compiled as the result of the complete checking.

922 Com. PATTERSON. Yes; let him look at it.

The WITNESS. Sure [handing document to counsel].

Mr. BURCHMORE. Well, the sheet you now show me is the sheet you compiled at the time you were examining the records right then and there?

The WITNESS. I was in charge of the compilation.

Com. PATTERSON. He had two or three men helping him, I suppose.

Mr. BURCHMORE. But it is what was written right then and there at the time the records were being examined?

The WITNESS. Oh, no; that is—Mr. Burchmore, as my testimony stated, if the Commissioner will allow me state it——

Com. PATTERSON. Go ahead.

The WITNESS. We show the elimination of those cars, from 72 I think we have got—we eliminated those that had been there less than four days and then the boiled down result is 22 cars One of the other service agents compiled that for me.

Mr. LOVERING. I don't know whether I can help shorten this up or not. I can give my understanding of what I think is correct.

That is, in checking this hold track, it was found that there were some cars on that track.

Mr. BURCHMORE. Yes.

Mr. LOVERING. They then kept track of them and subsequently eliminated cars held for one, two and three day periods, and as to the remaining number of cars which were held for four
923 days or more, that data was assembled on that sheet which counsel now has in his hand.

Com. PATTERSON. Let me see if I understand this correctly. You took a record of all the cars from day to day that were on the hold track and you saved out those that had been there for more than four days, is that correct?

Mr. LOVERING. Four days or over.

The WITNESS. That is not just the way we did it, but it is substantially the result; yes.

Mr. LE FORGEE. Well, I suppose that means yes.

Mr. BURCHMORE. Well, you and I, in the language of the street, would say yes.

Com. PATTERSON. That is right.

Mr. LE FORGEE. In other words, Sherlock Holmes, by a method of elimination has discovered the cars.

By Mr. BURCHMORE:

Q. Were you disguised when you looked at those cars.

A. I used no disguise.

Mr. LOVERING. I have no further questions on that point, Mr. Burchmore.

Mr. BURCHMORE. Well. I want to cross examine him.

Mr. LOVERING. Sure, I just wanted to make sure you were through looking at that.

Mr. BURCHMORE. You haven't any exhibit on this last phase of the case?

924 Mr. LOVERING. No, that was finished up so late there was no chance to prepare an exhibit.

Com. PATTERSON. What is the purpose of this? Why are you introducing this testimony?

Mr. LOVERING. Simply to show the—if it is of benefit to the Commission—the use of the hold track, not the use of the hold track, but the extent to which cars are held, loaded cars; nothing indicated there as to the purpose for which they were held.

Mr. LE FORGEE. I think, Mr. Commissioner, the question was most pertinent, as I have failed to see any element of substantial evidence which tends to sustain or dispute any theory advanced by either of the parties upon the issues in this case, although I am not objecting to it.

Mr. LOVERING. Mr. Commissioner, the matters I am offering now are being offered to prove—not that anything is wrong, they are simply offered here to present as complete a picture as we can of the conditions.

Mr. LE FORGEE. Assuming all that to be true.

Com. PATTERSON. Yes; I guess there is no dispute as to the fact that cars do come from the Staley plant and are held by the Wabash Railroad various lengths of time for billing. There is no dispute as to that.

Mr. BURCHMORE. That isn't what that is. There is something more to it than this. We don't dispute that there—and I
925 doubt that this witness would even suggest—we don't dispute that there are a great many cars, when you take the total for the year, on which the A. E. Staley Company pays demurrage, because the cars are held longer than the free-time period, if you please.

Mr. LOVERING. That was stated yesterday.

Mr. BURCHMORE. And this very first car, AESX 31, from Staley on April 15th, may have been held, so far as I know, four days or forty days and demurrage collected on it. If so, what does it prove in this case?

Exam. WEAVER. Would demurrage be collected if it is placed in the Wabash yard?

Mr. BURCHMORE. Certainly it is subject to demurrage when it is under load and it is held for the road beyond the free-time period, but that hasn't anything to do with this case. I am waiting to find what the witness has to say before we cross examine or offer rebuttal.

Com. PATTERSON. Will you have a witness who can explain the demurrage practice here?

Mr. LOVERING. No, sir; I am not prepared to explain or go into the question of demurrage.

Mr. BURCHMORE. I don't think there is any room for contention or controversy about it. We adhere to the usual demurrage practice. I believe we do.

Mr. LOVERING. I think Mr. Burwell testified on that yes-
926 terday.

Mr. BURCHMORE. Mr. Burwell mentioned that in his testimony in 1938.

Mr. LE FORGEE. He mentioned it the other day.

Mr. LOVERING. I think he mentioned it here; yes.

Com. PATTERSON. Well, I would like to know with respect to these cars where the cars were released so far as the Staley Company is concerned.

Mr. LE FORGEE. I suggest, Your Honor, that regardless of the pertinency of this evidence at the present time and the time which

is being consumed about it, I am not captious about the introduction of the evidence, let him go if you want to take the time to put it in and the time of the Commission and the Commissioner and Examiner, but I am utterly at a loss to see much of a purpose about it.

Mr. BURCHMORE. Mr. Commissioner, my only reason for interposing from time to time was to clear up a little point to save cross-examination. We want to help speed this along.

Com. PATTERSON. Yes. Now, will we have information—will anybody furnish information as to when these cars were released where they were released, and when the demurrage commenced and when the demurrage ended?

Mr. BURCHMORE. We will look into it.

Mr. LE FORAGEE. Isn't there a bare possibility, in the absence of such testimony of that kind, that by releasing it meant
927 that the Staley Company notified the Wabash Railroad that the cars were ready for shipment and taken out?

Com. PATTERSON. Is that when the demurrage starts?

Mr. LE FORGEE. No; what I had in mind was to suggest to the Commissioner, support the Wabash Railroad Company, of its own volition, pulled them out there as a matter of convenience for the operation of their own business, what have we got to say about it? It is in their yards.

Exam. WEAVER. It would not be satisfactory to the Staley Company to have its cars held as much as a week or ten days in one of these places?

Mr. LE FORGEE. Certainly not, and might lead to considerable confusion in the event of long and special activity by the lawyers, but there isn't any evidence as to the origin of the thing or whose purpose it was. The mere release of the property from the plant, a direction to take them out, is the fact which passes the responsibility, in a measure, on to the carrier. They are to go to a certain point, New York, Boston, Chicago, Danville, or some other place. The job is theirs.

Com. PATTERSON. Well, is it the practice—I am asking for information—is it the practice of the Wabash Railroad to take cars out of the Staley plant and hold them around four or five days or more in their yard with billing?

Mr. LE FORGEE. I don't know.

Com. PATTERSON. I don't, either.

928 Mr. BURCHMORE. Well, we will develop what facts have not been developed. Let the Commission put in the facts they have, which Mr. Lovering is doing, and we will meet them.

Mr. STRASSER. The Wabash witnesses will explain that fully. I understand this is a presentation here of the facts found by this witness. Now, we will show the significance or unimportance

of what is here presented. We will show the exact handling of those cars and tell all about it.

Com. PATTERSON. All right, go ahead.

Mr. LE FORGEE. Mr. Commissioner, the mere placement of the cars there, without a single scintilla of evidence which shows anything in relation to those cars, just does not establish a single issue in this case.

Com. PATTERSON. That is true.

Mr. LE FORGEE. They have offered nothing. They have no testimony. They produce simply the concrete—the fact that there are those cars, and that does not mean anything so far as the issues of this case are concerned.

Com. PATTERSON. No; not in itself. Go ahead.

By Mr. LOVERING:

Q. Mr. Strong, did you examine the switch lists of April 9th, 10th and 11th?

A. Is that out?

Com. PATTERSON. No; it hasn't been in.

Mr. LOVERING. I am asking you no more questions about that; I am asking you another question.

929 The WITNESS. I did.

By Mr. LOVERING:

Q. Did you examine the switch lists of April 9th, 10th and 11th?

A. I did.

Q. How many crews were working in the plant on those days?

A. Four.

Q. Can you give us the hours which they worked, approximately?

A. I can. From 7:30 a. m. to 3:30 p. m. and 3:30 p. m. to 11:30 p. m., and there is one crew working from 8:00 a. m. to 4:00 p. m.

Q. You mentioned only three crews, did you not?

A. No, 7:30 a. m. to 3:30 p. m.; 3:30 p. m. to 11:30 p. m.; 11:30 p. m. to 7:30 a. m.; and one crew from 8:00 a. m. to 4:00 p. m.

Q. Referring now to the switch list of April 9th, can you state how many times Building 48 received switching service between approximately 7:30 a. m. and 4:30 p. m.?

A. Four times.

Q. How about the second shift, between four o'clock and midnight, approximately?

A. None.

Q. The third shift, being approximately midnight to 7:30 a. m.?

A. Two.

Q. How about building 20; the first shift?

A. Building 20, the first shift on April 9th, two switches.

Q. The second shift?
A. Four.
930 Q. Third shift?
A. Two.
Q. Building 17, the first shift?
A. None.
Q. The second shift?
A. Three.
Q. The third shift?
A. Five.
Q. April 10, Building 48; the first shift?
A. Four.
Q. The second shift?
A. None.
Q. Third shift?
A. Three.
Q. Building 20; the first shift?
A. One.
Q. Second shift?
A. Three.
Q. Third shift?
A. None.
Q. 17 Building, how many times on the first shift?
A. Three.
Q. Second shift?
A. Four.
Q. Third shift?
931 A. One.

Mr. LOVERING. Mr. Commissioner, I would like to ask that these documents here, which have been marked for identification as Exhibits 31, 32, 33, and 34, be admitted in evidence.

Com. PATTERSON. They may be received and identified as Exhibits 31 to 34, inclusive.

(Exhibits 31 to 34, both inclusive, Witness Strong, received in evidence.)

Mr. LOVERING. I have nothing else.

Com. PATTERSON. Cross examine.

Mr. BURCHMORE. May I have just a minute?

Cross-examination by Mr. BURCHMORE:

Q. Mr. Strong, I just want to ask you a few questions concerning your work here. You came here, you said, in your opening sentences, to participate in this investigation at the direction of the Commission. From whom or by whom were you instructed to come here?

A. Mr. E. H. De Groot, director of the Bureau of Service.

Q. Can you recall whether you received any written instructions whatever?

A. I did. The only—it was either a telegram or a letter and I don't remember which, but I will tell you what it was. I have a letter to report to Mr. Wall here, which I did.

Q. And you received no instructions from Mr. De Groot as to what you were to do or how you were to do it or for what purpose?

932 A. No, sir.

Q. Well, were you—if I may put it that way—were you working under Mr. Wall's direction and without any special idea of your own as to the purpose of your work, or what it was to accomplish or its significance and all that?

A. I was working under the direction of Mr. Wall, but, of course, it—of course, I am obtaining certain information; if there is a certain way to obtain it, I might make a suggestion to him. But he was in charge of the work; yes, sir.

Q. You have not made any report to the Commission or filed any report of the results of your work?

A. No, sir; nothing except I would file either—I would be asked to prepare something in addition since I have been here before. It would be sent into the office, that is all; yes, sir.

Q. Did you call to Mr. Wall's attention any changes that may have occurred or any conditions that may be different as in April 1940, as you saw them and observed them and found them on the one hand, compared with corresponding matters of September 1939?

A. Of my own observation——

Q. No, I asked you did you call his attention to anything.

A. I did not; no, sir.

Q. Now, you wanted to say something more, I think?

A. I just wanted to explain.

Q. Yes; will you do so?

933 A. I shall, yes. Of my own observation——

Com. PATTERSON. Well, we are not interested in your observation. You answered his question?

The WITNESS. Well, I have answered it; yes.

Com. PATTERSON. Well, that is all.

Mr. BURCHMORE. Well, he seemed to want to say something more.

Com. PATTERSON. He has said enough.

By Mr. BURCHMORE:

Q. Did you examine the records of any other railroad at Decatur other than the records of the Wabash Railroad?

A. I did.

Q. And was that with reference to the dates of shipment in and out?

A. That was with reference to obtaining the point of origin and point of destination on some of these exhibits which I have stated.

Q. And with the exception of that information there was nothing you gained or sought from the records of other railroads?

A. Oh, no; I got some other information which was submitted, yes, sir.

Mr. BURCHMORE. I think that is all.

Mr. LE FORGEE. Just one question.

By Mr. LE FORGEE:

Q. You came to Decatur at the same time Mr. Wall was here in September and October?

934 A. I met Mr. Wall here. I think I arrived about the same day. Possibly I arrived a day ahead of him; I don't remember now.

Q. And when did you leave Decatur, with reference to that September and October visit?

A. As I recall, it was on October 7th.

Q. When was that with reference to the departure of Mr. Wall, before or after?

A. Mr. Wall was getting ready at the Orlando Hotel, getting his things together, when I left; but I do not know whether he left the same day I did or not.

Q. Well, approximately the same day?

A. Approximately the same day; yes.

Q. Now, have you completed that information which you have indicated as having been gathered by you in September and October, at the time Mr. Wall left?

A. What information do you have reference to?

Q. Why, the information you have given the Commissioner and the Examiner here this morning.

A. These car movements were taken——

Q. Please answer the question. I simply asked you a question that is easily answered. Had you completed your investigation as to those matters about which you have testified this morning as having occurred in September and October 1939?

A. Not all of them; no.

Q. Well, substantially all of them?

935 A. The greater part of them; yes.

Q. Yes. And did you report that to Mr. Wall?

A. I reported the information, the additional information I gathered, to——

Q. Will you be good enough to answer my question? Did you report that to Mr. Wall?

A. To Mr. De Groot, Chief of the Bureau of Service.
Q. Did you report that to Mr. Wall?
A. No, sir.
Q. Never?
A. No, sir.
Q. Not at any time?
A. Not at any time, officially.
Q. Well, did you unofficially?
A. Well, I might have talked to him.
Q. Oh, you know you did, don't you?
A. I don't recall; I might have talked to him about the detail, something like that.
Q. Oh, well, didn't you in a general way review with him what you had discovered and seen and the notes you had made in Decatur?
Com. PATTERSON. What difference does that make? He probably did.
The WITNESS. No; I will say no.

By Mr. LE FORGEE:

Q. You did not?
A. That is right.
936 Q. None of that information as you observed was in the hands of Mr. Wall at the time he made his report to the Commission, was it?
Mr. LOVERING. Well, Mr. Commissioner, I don't see what that has got to do with it.
Com. PATTERSON. No; that is all inter-Commission matters and I don't imagine there is anything secret about it but it isn't anything that is of concern here, as to what the Commission did within its own organization.
Mr. LE FORGEE. No; may I be permitted to ask one more question?
Com. PATTERSON. All right.

By Mr. LE FORGEE:

Q. Do I understand you as testifying on this occasion that that information which you gathered and about which you have made your report—about which you have testified this morning, was not in the possession of Mr. Wall at the time he made a report, whatever it was, to the Commission, and that you had not communicated that to him, either directly or indirectly?
Mr. LOVERING. I object to that question, too, Mr. Commissioner. I don't think the witness is competent to say or has knowledge as to when Mr. Wall made his report.
Com. PATTERSON. If the witness does not know, he can say he does not know.

Mr. LE FORGEE. Yes; without prompting.

937 The WITNESS. Mr. Commissioner, may I be allowed to answer that in my own way?

Com. PATTERSON. Answer the question if you know it and the answer; if you don't know it, tell him you don't know it; if you do, tell him you do know it.

Mr. LE FORGEE. That is it.

The WITNESS. I do not know.

Mr. LE FORGEE. All right, that is all.

By Mr. SMITH:

Q. Taking your Exhibits 31 and 32 those movements shown on there were not separate and distinct movements, one car at a time, were they?

Com. PATTERSON. Which exhibits are those?

Mr. SMITH. 31 and 32. He has many cars.

The WITNESS. What are those, grain?

Mr. BURCHMORE. Look at the exhibit.

Mr. SMITH. 33 is coal.

The WITNESS. Yes; coal.

Mr. SMITH. Take the grain, for example, 31 and 32.

The WITNESS. 31 and 32, grain; yes. I have not access to the switches so I couldn't give you that answer.

Mr. SMITH. So you don't know?

Mr. BURCHMORE. Oh, I think there must be a mistake about that. Can't you put that a little differently? May I suggest this, Mr. Smith?

By Mr. BURCHMORE:

938 Q. Look at this Exhibit 31, for instance, on grain, and 32 on grain; you don't suggest that on the 29th and 28th of September, that these cars were handled one at a time by an engine?

A. I would not think so.

Q. Well, you know very well they weren't.

A. I say, I haven't access to the switch list.

Q. Now, here on Exhibit 31 you have listed 24 cars of corn on September 29, one after another. You don't suppose the switch engine made 24 movements each of one car of corn?

A. No, sir.

Q. Maybe they made one movement of 24 or two of 12?

A. I think you are right, and, since you have mentioned that, I am going to be perfectly fair with you, that I believe those 24 cars of corn—may I talk a little off——

Q. Go ahead.

A. They don't switch—as a rule, they don't list the corn by individual car number, they just grab up a chunk and bring it along, and I believe, though, in those 24 that it was marked on

the yard check that morning and marked them coming down, and they were all moved at one time.

Mr. BURCHMORE. That is all we are asking.

Mr. SMITH. I just wanted to clarify that in my own mind.

By Mr. LOVERING:

Q. Put it another way: You took it off the yard check, you don't know whether they moved one car at a time or not?

939 A. I couldn't say specifically; no.

Q. So far as this exhibit is concerned.

Mr. LE FORGEE. I have one or two more questions if there is no further cross examination.

Com. PATTERSON. Go ahead.

By Mr. LE FORGEE:

Q. Mr. Strong, when you make your official reports, to whom do you make them, Mr. Wall, or Mr. DeGroot?

A. Mr. E. H. DeGroot, Chief of the Bureau of Service.

Q. With reference to those 22 cars which were being held on those hold tracks or the hold track, whatever it was, what is the longest period of which you have any record there, and give us the car numbers and initials.

A. Car Number SHPX–20616, 42 days. That is the maximum.

Q. That was 42 days including April 20th, is that it?

A. Including April 19th.

By Mr. BURCHMORE:

Q. Beginning when?

A. Beginning—it was placed, according to the yard check, on March 8th; from March 8th to April 19th, inclusive.

Mr. BURCHMORE. May I just ask one thing about that?

By Mr. BURCHMORE:

Q. Did you see that car 20616?

A. I did, I checked it.

Q. You saw it with your own eyes?

A. I did; I checked it.

Q. When did you first see it?

A. On April 16th.

940 Q. And when did you last see it?

A. That was the last time I saw it. From then I kept track from the yard checks.

Mr. BURCHMORE. That is all.

Mr. LOVERING. One more question.

By Mr. LOVERING:

Q. Mr. Strong, when you get instructions as to work you are to do, from whom do you get them in the ordinary course of business?

A. Mr. E. H. DeGroot.

Com. PATTERSON. Well, we have had enough of that sort of examination. The Commission controls their own employees.

Mr. LOVERING. I just want to clear up that point.

Mr. LE FORGEE. I think the Commissioner misunderstood why I asked about this. I think the witness specified, in response to my question, that as a matter of fact he made no report of what he saw here.

Com. PATTERSON. That is right.

The WITNESS. To Mr. Wall.

By Mr. LE FORGEE:

Q. You said you made none to Mr. DeGroot or anybody else, you told me.

A. Not while working under Mr. Wall's general direction, of course not, because I was directed to do a certain specific job.

Q. Well, you did not get any directions from Mr. DeGroot. Did you make an official report at the conclusion of your work in September?

941 A. No, sir.

Q. You did not?

A. No, sir.

Q. To anybody?

A. No, sir.

Com. PATTERSON. He makes an official report to the Commission each day.

Mr. LE FORGEE. Oh, yes, of course, where he was and what he ate and how much he spent, and all that.

Com. PATTERSON. Yes, not where he ate, exactly.

Mr. LE FORGEE. Well, whether he had his laundry out and all that, so that he gets his pay. But I am asking him whether he made that report as a result of his labor as applied to this matter, and he says no. That is all.

Com. PATTERSON. Are there any more questions? (No response.) That is all.

(Witness excused.)

I. D. THOMPSON was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Please state your name and occupation.

A. I. D. Thompson, switch foreman.

Q. What railroad?

A. The Wabash.

Q. How long have you been in the employ of the Wabash

942 in switching service?

A. Approximately 28 years.

Q. For how much of that length of time have you been here in Decatur?

A. 28 years.

Q. Are you thoroughly familiar with all of the Wabash yards in the Decatur switching district?

A. Yes, sir.

Q. Are you familiar with the Wabash track and yards as far west as the Illinois Terminal transfer?

A. Yes, sir.

Q. I should say, interchange?

A. Yes, sir.

Q. Are you familiar with their tracks and yards as far east as Brush College Road?

A. Yes, sir.

Q. Are you thoroughly familiar with the track lay-out inside the A. E. Staley Manufacturing Company's plant?

A. Rather familiar.

Q. When did you first start working in that plant as a switchman?

A. The 25th day of June 1936.

Q. And have you been working in there at various times since then?

A. Yes, sir.

943 Q. Are you employed there at the present time?

A. Yes, sir.

Q. Are you thoroughly familiar with the location of the various tracks and their numbers?

A. Yes, sir.

Q. In what form are your instructions issued to you, as to where you are to place a car? How is the destination of that car shown?

A. The information is shown on a switch list.

Q. If they want a car delivered at a certain building, in what form is that information given to you? On a switch list, but what is on the switch list?

A. The car initial and number, the track location, and empty or load.

Q. So the only information you have as to the final destination, then, is the track number?

A. To place the car.

Q. How long, to your own personal knowledge, have these track numbers been used in designating the place where you are to place a car or pick up a car?

A. In the Staley plant?

Q. That is right.

A. Since we went in there in '36, the 25th of June.

Q. 1936?

A. Yes, sir.

944 Mr. STRASSER. A little louder, Mr Thompson, we can't hear you.

By Mr. LOVERING:

Q. Mr. Thompson, I am handing you here a blueprint.

Mr. LOVERING. I might state, Mr. Commissioner, that I have requested the Staley Company to furnish a blueprint similar, or the same, rather as Exhibit 2 at the Chicago hearing, and this one blueprint is the one given to me yesterday by counsel for the Staley Company, and I believe it bears the same marks as the blueprint introduced at the Chicago hearing; in the lower right-hand corner File OS88A.

Mr. LE FORGEE. Why can't we just call it duplicate No. 2 and go on?

Mr. LOVERING. Drawing No. 3188A. If the other counsel have no objection, I am sure the Staley Counsel don't object, why I would like to ask that this be marked for identification as an exhibit. I wish to have certain track numbers marked on it.

Com. PATTERSON. Can't we use Exhibit 2?

Mr. LE FORGEE. Why not call it duplicate Exhibit 2?

Mr. BURCHMORE. Well, it is not quite that, and I would say this, Mr. Commissioner—pardon me, Mr. Le Forgee.

Mr. LE FORGEE. All right.

Mr. BURCHMORE: The only difference between this map which we furnished yesterday and the map in the record as Exhibit 2,

945 the map in the record as Exhibit 2 bears certain colorings which describe certain things that were intended to be shown thereby, as to track ownership and track changes, and so forth, and fence. That Exhibit 2 was testified about in the 1938 hearing and comments made on it; it would not be quite right now to put additional notations and pencil changes or anything else on that original exhibit; I quite agree with Mr. Lovering.

Com. PATTERSON. All right.

Mr. BURCHMORE. The only new thing about the blueprint we gave you, Mr. Lovering, and which you have here, is that we caused a draftsman to draw on there in red marking the location of the fence which you asked us to put on.

Mr. LOVERING. That is right.

Mr. BURCHMORE. Otherwise, this is a later edition, I would say, of the same map.

Com. PATTERSON. Well, I think under those circumstances, I think we had better identify it with a separate number.

Mr. BURCHMORE. Yes.

(Exhibit 35, Witness Thompson, marked for identification.)

By Mr. LOVERING:

Q. Mr. Thompson, on this blueprint here, will you please point out—wait a minute before I get to that question. When you bring cars in from the Wabash-Burwell Yard here on the eastern end of this print, and you bring them into the Staley plant, over what tracks do you move in going from the yard to the plant?

946 A. Either one of two tracks, the north way or the south way.

Q. Are those sometimes referred to as the north lead and the south lead?

A. Yes, sir; the north lead through 7–B.

Q. What do you mean by 7–B?

A. A track in the Burwell Yard.

Q. How many yards are there in that plant?

A. Known as three yards.

Q. Will you state what they are, please?

A. "C" yard is here in the coal yard, "A" yard is the next yard to the south, and "B" yard is to the south of "A" yard, by the south fence.

Q. Does "A" yard include the tracks and switches in the general vicinity of Elevators "A" and "B"?

A. Yes, sir.

Q. And the coalyard is located in which direction from Elevators "A" and "B"?

A. West.

Q. West of that? When you speak of track 1–A, what do you mean?

A. 1–A is very seldom referred to in that language. It is the north lead, referred to as the north lead.

Q. Will you please mark on the blueprint where track 1 is located?

A. To the best of my ability.

Q. All right, off the record.

947 (Discussion outside the record.)

Mr. LE FORGEE. I can't hear what you say.

Mr. LOVERING. I am just indicating for the record how he can mark it.

Mr. LE FORGEE. Let's hear your indication.

By Mr. LOVERING:

Q. Will you please state, in your own words, exactly where track 1 is located?

A. Track 1–A or the north lead, as it is commonly referred to, is the——

Q. Where does it begin at the eastern end?

A. The eastern end would begin out at the western end of Burwell Yard.

Q. Extending where from that point?

A. Down to No. 3–A, down to the tank track, tank-track switch.

Q. All right, will you mark track No. 1? Does it go on the northerly side of the yard, or just where does it go?

A. Yes, sir; on the northerly side.

Q. Will you please mark on that print there the best you can which one of those tracks is track 1?

A. We refer to this as track 1 [indicating] or the north lead, as it is commonly known.

Q. Is that the most northerly track on the north side of Elevator "B"?

A. Yes, sir. The second track north of Elevator "B."

Q. Yes, the second track north of Elevator "B." All right.

948 A. Correction, the first track north of Elevator "B."

Mr. LOVERING. I think, Mr. Commissioner, the track marked by the witness is the second track north of Elevator "B." Each one of those lines represent a track.

Mr. BURCHMORE. Well, wait—it is awful hard to keep still.

Mr. LE FORGEE. Maybe the lawyer better be sworn.

By Mr. LOVERING:

Q. How many tracks do you have on the north of Elevator "B"?

A. It is the first track north of Elevator "B."

Q. What is the name of the second track north of Elevator "B"?

A. 2–A. That is north of Elevator——

Mr. BURCHMORE. Pardon me, just a moment. We will not have any copies of what he is marking here and I don't know what his mark means. I would just like—wishing to avoid interruption, I would just like the witness to say how long a stretch of track is comprehended in this term, north lead, what is the length of it?

The WITNESS. Well, it would be hard for me to say; it is quite a long track.

Mr. BURCHMORE. Well, the pencil mark you have made on the exhibit is just two words, one right after the other, and I don't know where the track begins or where it ends. I am puzzled to known whether you are indicating a stretch that covers about 24 inches on the blueprint or 3 inches on the blueprint.

949 Com. PATTERSON. Where are you starting, at what street? I have a map here.

By Mr. LOVERING:

Q. Where does the north track start at the eastern end?

A. The eastern end starts at the west end of Burwell.

Q. That point is approximately between what streets?

A. 24th and 25th.

Q. Is it directly under the "r" in Decatur Ice Company?

A. Almost.

Mr. BURCHMORE. Well, now, can't he put a large figure "1" or "A" or something or other at that point?

Mr. LOVERING. All right.

The WITNESS. I can write "north lead" there, if you wish.

Com. PATTERSON. All right, go ahead.

(Blueprint marked as requested.)

By Mr. LOVERING:

Q. To what point does that north lead extend?

A. From the west end of "B" yard to the west end of "A" yard.

Q. Will you please mark that point with the figure 1?

Com. PATTERSON. Well, what street is that?

The WITNESS. It will be between Jordan and Folk Street on the north side.

By Mr. LOVERING:

Q. On the south side it would be about opposite what street?

A. On the south side it would be between 17th and 18th. Correction, 16th and 17th.

950 Q. It would be near 17th, wouldn't it?

A. Yes, sir.

Mr. BURCHMORE. Now, that is about 16 inches on the blueprint isn't it, something like that, that whole track, 16, 18 inches?

The WITNESS. Something like 16, 18 inches.

By Mr. LOVERING:

Q. For what purpose is that track used?

A. To get around the north way to serve the east end of 2–A, to serve the east end of 3–a, sometimes, to work the bean spur, to work—to proceed to Burwell and work the east end of Elevator "A" and to pull the feed out of the feed track.

Q. All right; these various points you have mentioned, will you please point out track 2–A?

A. 2–A is directly—is under the shed on the north side of Elevator "B."

Q. Will you please put a figure 2 across the track?

(Blueprint marked as requested.)

Q. This is track 2–A, on the north side of Elevator "B," begins at what point on the eastern end?

A. Begins on the north side of Elevator "A"—north and west side of Elevator "A."

Q. Is there a switch at that point?

A. Yes, sir, there is.

Q. With what does that switch connect?

A. With the north lead.

951 Q. All right, what is the eastern end of that track?
A. This is the eastern end.
Q. I beg your pardon, what is the western end of that track?
A. The western end of that track runs down here to 3–A.
Mr. LE FORGEE. Isn't that all disclosed on the face of that map?
Mr. LOVERING. There is no information on the map, sir, as to the track numbers.
Mr. LE FORGEE. I am not asking you about the numbers, I am asking you, after you have affixed the numbers, isn't the direction on the face of the instrument?
Mr. LOVERING. No.
Mr. LE FORGEE. All right.

By Mr. LOVERING:

Q. Where is the western end of this track 2–A?
A. Slightly east of Folk Street.

By Com. PATTERSON:

Q. Slightly east of what, Folk Street?
A. Folk Street; almost above the "E" in "A. E. Staley."
Mr. LE FORGEE. Is that disclosed on the map?

By Mr. LOVERING:

Q. Will you please mark the approximate point with the figure 2?
Mr. BURCHMORE. You have already got a 2, haven't you?
Mr. LE FORGEE. Just an instant, is that disclosed at the point there where contact is disclosed by the white lines?
Mr. LOVERING. That represents——
952 Mr. LE FORGEE. I am asking the witness.
Mr. LOVERING. The western end of the tract; approximately.
Mr. LE FORGEE. I am asking whether or not those two white lines disclose the point of contact about which you are speaking?
The WITNESS. To go in 2–A; yes.
Mr. LE FORGEE. Yes; so it appears from the face of the map.
The WITNESS. Yes.
Mr. LE FORGEE. All right.
Mr. BURCHMORE. Now, just to be—off the record, Mr. Commissioner.
(Discussion outside the record.)
Com. PATTERSON. Mr. Le Forgee, will you have a map prepared?
Mr. LE FORGEE. Yes, we will. Just a minute.
Mr. BURCHMORE. Well, we have got one that we can furnish if you want to take a few minutes, that the witness can use right now.

Mr. LE FORGEE. There is no necessity for it if all he wants is to have it in the record. Get your map and let Mr. Lovering look it over and if there is something in addition that he wants to disclose, let him tell what it is and he can disclose that.

Com. PATTERSON. All right, go ahead with your examination, Mr. Lovering.

953 Mr. LOVERING. I beg your pardon, will you please state what understanding has been reached.

Mr. BURCHMORE. We will furnish a map.

Com. PATTERSON. They will furnish a map with all these points indicated on the map.

Mr. LE FORGEE. Yes; numbered. If it isn't what he wants, let him tell what he wants, and, if it is fair, it will go in and if it isn't it will be for the Commission to decide.

Com. PATTERSON. Yes. All right, go ahead with your examination.

By Mr. LOVERING:

Q. Will you please state the use made of track 1–A in the Staley yard by you in the course of your ordinary operations?

A. The use of 1–A as the north lead; yes, sir.

Q. Any loading or unloading points on it?

A. An unloading point at 18 Building.

Q. Any loading points?

A. Might be; temporary.

Q. At what point?

A. Cinder pile.

Q. Which end of the track is that?

A. Pretty close to the west end.

Q. How about track 2–A; any loading points on it?

A. Loading?

Q. On track 2–A?

954 A. An unloading point on 2–A.

Q. An unloading point. At what building?

A. Elevator "B."

Q. For what purpose is track 2–A generally used?

A. To place beans on for Elevator "B" to unload.

Q. All right, how about track 3–A; for what purpose is that usually used?

A. Located on the north side of Building 48 for the purpose of putting in empty box cars to be loaded at Building 48 and to place miscellaneous stuff to unload at 48.

Q. How about track 4–A?

A. To place empties on to load out-bound loads.

Q. Ever used for unloading purposes?

A. I don't recall any.

Q. How about track 5–A?

A. We use that as a storage track to hold empty box cars on for different shops around the plant.

Q. Used for unloading at all?

A. No, sir.

Q. Any loading done there?

A. No, sir.

Q. How about track 6–A?

A. For the purpose of holding surplus coal, overflow coal, or box cars as the situation happens to be.

Q. Any loading done there?

955 A. No, sir.

Q. Any unloading done?

A. No, sir.

Q. Track 7–A?

A. 7–A is a continuance of the scale track or lead through approximately the center of "A" yard.

Q. For what purpose is track 7–A used?

A. A great many, the weighing of cars, pulling the empties from the west end of Elevator "A," to work the coal dock, to do practically the work from 6–A to 15–A in the "A" yard.

Q. Is there any resemblance between the usage to which that track is put and the lead track in the yard?

A. It is a lead.

Q. On which end of that track are the scales located? You referred to scales.

A. The scales are pretty close to the west end of the track.

Q. Are there any loading points on track 7–A?

A. No.

Q. Any unloading points?

Mr. LE FORGEE. He has answered.

The WITNESS. No.

By Mr. LOVERING:

Q. How about track 8–A? Will you please state the purpose for which that is generally used?

A. 8–A is used to load cinders from the cinder pit.

Q. Any unloading done there?

956 A. No.

Q. On any of these tracks to which I have referred so far, tracks 1–A to 8–A inclusive; is there any interference in the way of scales; anchor cars or anything of that kind?

A. No.

Q. You have free movement, do you, from one end of the track to the other?

A. Yes, sir.

Q. Track 9–A, please state—the purpose for which that is used.
A. Placing coal to be unloaded at the dock.
Q. Any unloading done there?
A. No, sir.
Q. Any obstruction there of any kind to the handling of cars in and out of the track?
A. No, sir.
Q. Track 10–A; what is the purpose for which that is usually used?
A. Placing coal to be unloaded at the dock.
Q. Any unloading done there?
A. No, sir.
Q. How about—correct that; any loading to be done there?
A. No, sir.
Q. Is there any interference of any kind in taking cars in and bringing them out?
957 A. No, sir.
Q. Do you have a track 11–A?
A. 11–A is known as the feed elevator track.
Q. Any loading done on that track?
A. Yes, sir.
Q. Any unloading?
A. Yes, sir.
Q. Is there any interference on that track in the way of scales, anchor cars, or anything of that kind?
A. No, sir.
Q. Track 12–A?
A. 12–A is a track going into what is known as the former roundhouse, or described as the machine shop.
Q. Is there any loading done on that track?
A. No, sir.
Q. Any unloading?
A. No, sir; very rare.
Q. Not in the normal course of operation?
A. No.
Q. Any interference to your movement in and off that track?
A. No, sir.
Q. Track 13–A?
A. Place tanks over the pits to be cleaned as required.
Q. Is there any loading or unloading?
A. No.
958 Q. Is there any interference getting those tank cars in or out?
A. No, sir.
Q. Track 14–A; what is that generally used for?
A. Usually to place a car of acid to be unloaded.

Q. Any loading done there?
A. No, sir.
Q. Any interference in getting those cars in or out?
A. No.
Q. Do you have occasion to use that track if you have got a car in there for unloading?
A. For our convenience.
Q. Do you have to do anything with that car which is being unloaded that is already there?
A. No, sir.
Q. Is there a track 15–A?
A. There is a track 15–A.
Q. For what purpose is that generally used?
A. Serves 16 Building and Building 20.
Q. For loading?
A. For loading purposes.
Q. How about unloading?
A. Sometimes, as the case may be.
Q. Do you have a track 16–A?
A. Beg your pardon?

By Mr. Le Forgee:

Q. Do you have a track 16–A?
959 A. No, sir.

By Mr. Lovering:

Q. Are there any other tracks in "A" yard to which I have not referred?
A. No.
Q. All right, in "B" yard, track 1, whhat is that ordinarily used for; 1–B?
A. 1–B serves as a second track north of 17 Building, is used for the purpose of placing tank cars to load and box cars to load with syrup.
Q. Is any unloading done there?
A. Sometimes.
Q. As the usual course of business, or occasionally?
A. Just occasionally.
Q. Are there any interferences of any kind in getting cars in or off that track?
A. No, sir.
Q. Track 2–B?
A. For the same purpose as stated in No. 1; loading.
Q. No unloading done at all?
A. Cleaning tanks, loading tanks, and loading syrup.
Q. And no unloading; is that correct?
A. Occasionally.

Q. No unloading on that track?
A. Occasionally.
Q. All right; any interference?
960 A. No, sir.
Q. Track 3–B; for what purpose is that ordinarily used?
A. It is used for the purpose of holding tank cars or cars that we are unable to place.
Q. Cars held for future placement?
A. As the occasion might be; yes.
Q. Any loading done there on that track?
A. No, sir.
Q. Any unloading?
A. No, sir.
Q. Track 4–B?
A. The same purpose.
Q. For what purpose is track 4–B ordinarily used?
A. The same purpose as 3–B.
Q. Both as to loading and unloading?
A. No unloading or loading.
Q. No unloading or loading. Any obstructions there?
A. No, sir.
Q. 5–B; for what purpose is that ordinarily used?
A. 5–B is located on the south side of 17 Building for the purpose of placing cars for the loading of glucose and the unloading of cans occasionally.
Q. Used for both loading and unloading?
A. Yes, sir.
Q. Any obstructions or any interference in getting in
961 or out there?
A. No.
Q. Track 6–B?
A. The same as track 5–B.
Q. The same purpose?
A. The same purpose.
Q. Any obstruction of any kind?
A. No.
Q. 7–B?
A. 7–B is used as a running track or a lead to serve 5–B and 6–B and 6–B–20 and 7–B–20.
Q. Is it used any time for any loading or any unloading purposes?
A. No; it is a running track.
Q. How about track 8–B?
A. Track 8–B serves the north side of the warehouse, Building 33, for the purpose of loading or unloading.

Q. Any obstruction in getting in or out of there?
A. No.
Q. How about track 9–B?
A. It is spiked; out of commission.
Q. Is 10–B in use?
A. No, sir; spiked; it is out of commission.
Q. How about 11–B?
A. 11–B is used for various purposes.
962 Q. What is the most common use on 11–B?
A. Reclaimed grain doors from Elevator "A" and "B."
Q. Any other purpose for which that is used in the ordinary course of business?
A. To go to the Mississippi Valley.
Q. You mean, the Mississippi Valley Structural Steel Company?
A. Steel Company; yes.
Q. On the south side of the Staley plant?
A. Yes, sir; also to load the south side of the warehouse at Building 33.
Q. I don't know whether I asked you that question, Mr. Thompson, but in connection with interference in getting through these tracks, on the south side of Elevator "A" is there a track scale in there?
A. Yes, sir.
Q. Can you run an engine through there?
A. We don't do it on the Wabash.

By Com. PATTERSON:

Q. Well, do you do it in the Staley plant?
A. No, sir; we don't run an engine over no scale.

By Mr. BURCHMORE:

Q. It isn't done on the Wabash Railroad, you meant; it is not your practice?
A. It is not our practice.
Q. To run engines over scales.

By Com. PATTERSON:

Q. Just a minute, at that point, do these scales have a dead track?
963 A. Yes, sir.
Q. You don't run engines over the dead track?
A. We have no occasion to go over a dead track.
Q. If you had occasion, would you?
A. We would use the dead rail.
Q. Yes; but you never do it?
A. No, sir.
Q. What do you do with them; switch them from either end?

A. The tracks are filled up from the east end and the engine pulls them out at the west end. It is not necessary to go over the——

Q. If you wanted to swi ch the track, would you switch it from both ends rather than go over a dead rail?

A. If the occasion might be that way; yes.

Q. You would not go over the dead rail?

A. Switch from either end or use the dead rail, if necessary, in my line of work.

Q. Tell me whether or not you would use the dead rail.

A. I would use the dead rail; yes, sir.

By Mr. BURCHMORE:

Q. When you said not on the Wabash——

A. I meant that is not the practice.

Q. You meant what you were doing here was just the same as your practice anywhere?

A. Yes.

By Mr. LOVERING:

964 Q. Going back to "A" yard for a moment, Mr. Thompson, will you please tell us where the germ meal spur is located?

Mr. BURCHMORE. Could we ask a question ahead of that? Does 11–B end the list of "B" tracks?

By Mr. LOVERING:

Q. Mr. Thompson, we have covered it to 11–B. Are there any any other tracks in yard "B" beyond 11–B?

By Com. PATTERSON:

Q. Is there a 12–B or 13–B?

A. No; there is no 12–B. The Mississippi Valley leads off of 11–B. 11–B is the last track.

By Mr. LOVERING:

Q. Do you have a track known as the germ meal spur?

A. Yes, sir.

Q. Will you please tell us where that is located?

A. It is located getting into the alley way on the west side of the feed elevator.

Q. What building number would that be; would you know that by number?

A. The elevator would be, I believe, Building 12, and the germ meal track would serve Building 9.

Q. Is there a spur track leading east off of the track which is on the south side of Building 9? Is that the one you referred to?

A. Please repeat the question.

Q. There is a spur track shown extending in an easterly direction on the south side of Building 9. Is that the track you
965 have in mind?

A. It is on the south side of Building 9; yes.

Q. Just above that point you see Building 18 on the east side of the corn elevator?

A. Yes, sir.

Q. Just above that there is another spur track which appears to extend in a general westerly direction. Will you please give us the name of that?

A. Bean spur.

Q. Bean spur. For what purpose is that used?

A. Placing a tank car for the purpose of loading oil and placing beans for the purpose of unloading; one car of each.

Q. How about that germ meal spur; for what purpose is that used?

A. Well, that is used for coal to supply the heat for the drier, or, as I understand, the feed is cooked, to unload blackstrap molasses, and some preparation of the feed and to recondition the feed.

Q. Is there any loading done there?

A. Very rare.

Q. Any loading done on the other track to which you referred on the north side of Building 18?

A. One car is being loaded almost all the time, and the other car, the bean car, is being unloaded almost all the time.

Mr. BURCHMORE. May I just interpose a question right here to get this straight, Mr. Lovering?

966 Mr. LOVERING. Yes.

By Mr. BURCHMORE:

Q. Is this germ meal track that you referred to; is that track shown on this blue print, Exhibit 6, which I am showing you? Look at it carefully.

A. Yes, sir.

Q. In that the short upper—the upper or short spur track that is shown immediately adjacent to the feed house, Building No. 9, on the blue print, Exhibit 6?

A. Yes, sir.

Mr. LOVERING. Are you all through, Mr. Burchmore?

Mr. BURCHMORE. Just a minute; all right.

By Mr. LOVERING:

Q. Mr. Thompson is there an anchor—do you remember whether or not there is an anchor car in "B" yard, in tracks 1 or 2; a car fixed there almost permanently?

Mr. BURCHMORE. I don't know what that is.

Com. PATTERSON. It is placed and fixed there, probably hooked up with a pipe or something.

The WITNESS. I don't understand your question.

By Mr. LOVERING:

Q. Well, is there a car on any one of those tracks which is more or less fixed there so that while certain work is being done on it, it can't be moved?

A. Well, part of the time there is a tank car in 1-B. Part of the time that tank car is connected and part of the time it is not. It is a case of look and see when you go in there.

967 Q. In that a tank car which is kept there on that track all the time when the use of the track is not needed for other purposes?

A. The track is there—the car sets there most all the time. I don't recall any time the car is out of there, and, as I say, sometimes the car is connected and sometimes it is not, and it can be moved in either direction.

By Com. PATTERSON:

Q. What is that; a tank car?

A. Yes, sir.

Q. And it is connected with an unloading pipe or loading pipe?

A. Loading pipe, I believe.

Q. Loading pipe; and this pipe is connected up during the time they are loading the car?

A. Yes, sir.

Q. And how long does it take to load that car?

A. Well, the car, as I understand it, is used for sort of storage purposes.

Q. And then they leave it setting there for storage purposes?

A. As the occasion might be; yes.

Q. When you come along there you have to look to see whether the pipe is connected up or whether it is not?

A. If the car we want to get is on the track and it is coupled onto it, yes; we have them disconnect the pipe.

By Mr. BURCHMORE:

Q. Well, what is there beyond that car?

A. East of it is the loading pipes on 1-B to load the tanks of glucose. West of it is box cars being loaded with syrup.

By Com. PATTERSON:

968 Q. About how often do you have to get in behind that car?

A. We work the track from both ends. Most of the work is done on the track at night on the west end and occasionally on the east end in the day time.

Q. Yes. Well, then, about how often do you have to move that car in order to take care of your work?

A. Well, perhaps once in 24 hours; maybe not that often.

By Mr. LOVERING:

Q. I believe back at the beginning of your remarks you stated there were three elevator yards, "A," "B," and "C." Will you please state——

Mr. BURCHMORE. Might we just get through with that car and away from it?

Mr. LOVERING. I beg your pardon?

Mr. BURCHMORE. This anchor car you were talking about, has there been any such car as that in the last two or three months; last 30 days.

The WITNESS. The car sets in 1–B on the north side of 17 Building, and the other day the car was free; was not connected at all.

Com. PATTERSON. They have been setting there any time in the last two or three months; is that your question?

Mr. BURCHMORE. Yes; the last 30 days has there been any such car there?

The WITNESS. Yes; the car has been setting there.

By Mr. BURCHMORE:

Q. Is it something really in your way?

969 A. Not at all; it does not interfere with us.

Q. Does it make any difference whether it is there or not?

A. No.

Q. In the conduct of your work?

A. That is right.

By Com. PATTERSON:

Q. Well, it wouldn't make any difference whether it was that car or some other car was spiked to the track?

A. The car is not spiked.

Q. Well, I know, but anchored, so to speak, connected with a pipe. You have to look to see whether the car is connected or whether it isn't?

A. We do that if we go in the track any place.

Mr. BURCHMORE. What I meant, Mr. Commissioner, is this: It is just a plain, common-sense question. If that car is an impedim[illegible] to you, if it is something you would rather not have there—

The [illegible]TNESS. The car does not interfere with us any more than runways in a car; you can stop and have the workmen remove the runs.

By Com. PATTERSON:

Q. If they were loading a car at a platform——

A. Yes, sir.

Q. You would look to see whether planks were——

A. The same situation.

970 Mr. LOVERING. Are you all through with this?

Mr. BURCHMORE. Sure; that is fine.

By Mr. LOVERING:

Q. In respect to yard "C" that you have spoken of, will you please state what the numbers are of the tracks in that yard?

A. In the "C" yard, 1 and 2; coal yard.

Q. Is that numbered 1–C and 2–C; is that the designation?

A. It is referred to as "C" yard, "A," "B," and "C," or coal yard.

Q. Track C is the coal yard?

A. "C" yard; yes, sir.

Q. Do you have tracks in there known as north coal storage, south coal storage, tracks of that kind?

A. Also, yes; they are spoken of as that name.

Q. Will you please state where the north coal storage track is? And the purpose for which it is used?

A. The north coal storage track is known as No. 1 and is the north track opposite the coal pile inside of the west fence, running east from the west fence.

Mr. BURCHMORE. Hasn't he already described that by another number?

Mr. LOVERING. Not in yard "C."

By Mr. BURCHMORE:

Q. You haven't described that track before?

A. No; I haven't.

Mr. LOVERING. No; he was referring to yard "B," I
971 believe, or yard "A"; pardon me.

By Mr. LOVERING:

Q. Is that north coal storage track the most northerly of the Staley tracks in that end of the yard?

A. Yes, sir.

Q. What track is next or south of it?

A. 2; coal yard.

Q. Is that sometimes referred to as the south coal storage?

A. Yes, sir.

Q. The purposes for which used are the same as the north coal storage?

A. Yes, sir.

Q. Do you unload on each track?

A. Yes, sir.

Q. Do you load on each track?

A. Yes, sir.

Q. What other tracks do you have in the coal yard? Do you have a track known as the mine track?

A. Not in the coal yard.

Q. Which yard is that located in?

A. The mine track is an individual track at the west end of "A" yard.

Q. For what purpose is it used?

A. Unloading cinders, putting a supply, overflow supply, of beans into hold for the accommodation of "B" elevator; beans to the elevator.

972 By Com. PATTERSON:

Q. Do you put them in there to hold them for accommodation and then later go on back and get them?

A. To fill out.

Q. To fill out?

A. Yes, sir.

By Mr. LOVERING:

Q. Do you have any track in that vicinity, any other tracks, that are used in holding cars for Elevator "B" or Elevator "A", either one?

A. In that vicinity? No.

Q. Or anywhere else in the yard?

A. No.

Q. How about the tank track; where is that located?

A. That is located on the north side of 4–A, between 3–A and 4–A, and it is a stub track connected on the west end.

Q. Is that ever used as a hold track?

A. For various purposes, railroad accommodation.

Q. Will you please state briefly the different kind of cars that have been held there?

A. Syrup empties or a few cars of coal, if we did not want to clutter up the long track with a few cars of coal we would stick——

Q. Do you, by any chance, hold beans there?

A. Might be; whatever the situation was.

Q. Depending on track conditions and what you needed in the way of room for your cars?

A. Yes, sir.

973 Q. That is a stub track, is it?

A. Yes, sir.

Q. And then from which end do you switch it?
A. West.
Q. What is the capacity of the unloading track at Elevator "A"?
A. 13 cars to full spot.
Q. And from which end is that served?
A. To get it filled?
Q. Yes, which end do you fill it from?
A. From the east end.
Q. In ordinary practice, how many of those cars would be in position for unloading when you go away and leave them?
A. Well, with a full spot one car would be spotted on a hopper with 13 cars.

By Com. PATTERSON:

Q. I just want to get that clear in my mind. When you make the first spot, you actually spot the first car on a hopper?
A. The first car, so that we can get no more car in.
Q. Yes.

By Mr. LOVERING:

Q. As they unload that track do they normally unload all 13 cars before the engine is taken away, or would you take away the engine before they are unloaded?
A. No; if we would be in that neighborhood, we will take the empties away, if the engine is in that vicinity.
Q. Do you ever intend to have all 13 unloaded before
974 you take empties away?
A. We don't wait for 13 to be unloaded. If there is work on track 7-A we do that work on it, and if the engine is up in that vicinity we pull the empties in order to do this other work.
Q. How many could be unloaded there before it would be necessary to have an engine up there to take away the empties?
A. Oh, they could unload a great many on a spot, I imagine 20; but if we waited that long we would be tied up on other movements.
Q. Well, if they unloaded 20 or even 13, would that block the crossing there, or anything of that kind?
A. They would be down on that first crossing; yes, sir.
Q. You don't, do you, intend to let those crossings be blocked in the course of your operation?
A. No, sir; we do not; we want the crossings open.

By Mr. BURCHMORE:

Q. They always are open, are they not?
A. Yes, sir.

By Com. PATTERSON:

Q. Are these crossings within the plant?

A. Yes, sir.

Q. Not a public highway?

A. No.

By Mr. BURCHMORE:

Q. They are track crossings that you are speaking of, your own track——

Com. PATTERSON. No; they are road crossings, aren't they?

Mr. BURCHMORE. No; there are no roads in there.

975 The WITNESS. There is no streets or public roads; they are only plant roads.

Com. PATTERSON. He is talking about some crossing in the plant.

By Mr. LOVERING:

Q. The crossing inside the plant are open for the general public?

A. No; just the plant roads.

Q. Mr. Thompson, did you do any switching inside the Staley plant last fall?

A. Yes, sir.

Q. When you were doing that switching, where did you go ordinarily to receive the instructions as to what was to be done?

A. The scale house.

Q. From whom would you get these instructions?

A. The Wabash clerk.

Q. In what form would they be issued to you?

A. On a switch list.

Q. Did you ever receive instructions down there at any time from anyone else connected with the Wabash?

A. Not pertaining to doing the Staley work.

Q. That is what I mean, just the Staley work.

A. No.

Q. Did you ever receive any instructions; any written instructions, from anyone connected with the Staley Company?

A. No, sir.

976 Q. After being given these switch lists, do you do the work in the order in which it appears on the switch list, or are you expected to look it over and size up for yourself the work to be done and do it in the way you think is going to be the most efficient manner?

A. We aim to do it in the order it is listed unless stated to give preference, or something of that type.

Q. You are not expected to use your own judgment, then, in the way you handle it?

A. We can work two or three jobs in conjunction with one another, perhaps, in some movements; yes.

By Com. PATTERSON:

Q. You say that sometimes there is a rush job shown on the switch list?

A. Unless there is a movement that is going to be wanted given preference and it is so stated.

Q. That sometimes happens?

A. Very rare, though.

Q. You give that preference, then?

A. Yes.

By Mr. LOVERING:

Q. What is the important factor in planning your work, bringing these different jobs together, as you say, and—are you trying to do your work with the primary idea in mind of accommodating the industry or the Wabash Railroad?

A. Of accommodating the industry and getting my work
977 done as speedily as possible.

Q. In other words, you are trying to establish a team work proposition?

A. Yes, sir; we have a system, in a way.

Q. Does it occasionally happen that you can't switch a track when you want to? What I have in mind is this: You stated a short time ago, explaining the tank car which might have a spout connected with it at times, you referred to an unloading platform by way of comparison, at which men might be working. Now, I will ask you, do you encounter that situation anywhere in the plant?

A. There are men working at a great many platforms around the plant; yes.

Q. In the normal course of your business, when you have work to do on those tracks, what precaution do you take, if any, for the safety of those men?

A. We don't couple into cars until we ascertain if the men are out of the way and the runs are up.

By Com. PATTERSON:

Q. Do you have to wait there occasionally?

A. Not very long; no, sir.

Q. What would happen if you broke one of those unloading oil pipes off?

A. I don't know, I might be looking for a job.

Q. You never did it, then?

A. No.

978 By Mr. BURCHMORE:

Q. It would be a rather malicious thing to do that, if you did it on purpose, would it not?

A. I would not aim to do it on purpose.

Com. PATTERSON. No; the point I had in mind was, in the ordinary coupling on and switching of cars, if this pipe happened to be connected it would not be a malicious thing because you don't look under every car, ordinarily?

Mr. BURCHMORE. That is right.

Com. PATTERSON. To see whether the pipe is connected to it.

Mr. BURCHMORE. But if a fellow just went in there and jumped in and said, "I don't give a darn whether I do it or not," it would be rather a malicious thing to do.

Com. PATTERSON. I would say so.

By Mr. LOVERING:

Q. State whether in the handling of switching of cars to track 15–A, if you wanted to get those cars down to Building 20 and track 15–A were occupied at Building 16, how would you make the move?

A. Couple into the cars at 15–A, 16 Building, if the runs was out. When the runs was removed, reach up and couple up the crossing and pull 15–20.

Q. You would not go around, then, and work 15–20 from the east end?

A. No, sir.

Q. Would that same situation hold true with track 6–B?

A. It might be unless I wanted the extreme east car off of
979 the track. I would not disturb the whole track to get the east car, I would go to the east end and get the car.

Q. In that case you would go around and come in from the east end?

A. Yes, sir.

Q. To what extent would you encounter a similar situation elsewhere in the plant at unloading points?

A. I don't understand your question.

Q. Well, would there be other places in the plant where you would not have direct access to the particular point where you wanted to work and where you would have to reach in and pull out some cars?

A. Well, there might be, yes; on a stub track there would be that situation.

Q. During the course of your regular duties are you ever called upon to set out cars to be held for billing?

A. The way we might be called upon to do that, if a switch list stated to pull 15–A–20 to 6–B–20, or 7–B–20, or whatever the occasion might be, it might be stated there to set out for bill.

Q. The instructions you get; just what do they tell you?

A. The clerk, our Wabash clerk, puts the order, switch order, on a card. I follow the card, whatever the card states.

Q. And you give it in just the exact words in which he would give you the order?

980 A. Yes, sir, if a car was listed "set out for bill" I would bring it out and set it out.

Q. What I mean is, the exact words shown on the switch list for a move of that kind——

Mr. Le Forgee. The whole line of questions is conjectural and a possible case that existed at some vague time which may be in the mind of counsel and an entirely different question in the mind of the witness. Now, if he has some particular transaction, why, let's have it.

Mr. Lovering. The question, Mr. Commissioner, is whether in the normal course of business he would do it that way.

Com. Patterson. Let me ask a question.

Mr. Le Forgee. The questions are all leading and suggestive.

Com. Patterson. Well, you did not do such a bad job of leading your own witnesses, so let me ask the question.

Mr. Le Forgee. I did not consume the time, either.

Com. Patterson. Well, you have done a pretty good job of consuming time.

By Com. Patterson:

Q. These cars that are so-called no bills, that are loaded in the plant, what type of instructions do you get with respect to removing these cars from the track?

A. The list will state the initial and the number and to set out for bill.

Mr. Le Forgee. Set out for bill?

Com. Patterson. Yes.

981 Mr. Le Forgee. That is the word.

Com. Patterson. The list has "set out for bill."

By Com. Patterson:

Q. What do you do with the car?

A. I place it some place to get it out of my way. The list will also state to set in so many empties. I will set these loads out and get the empties and shunt them back and then at a convenient

time of my own, without any further deliveries to any part of the plant, I will take the cars out to the Wabash yard.

Q. You take them out to the Wabash yard, these no bills?

A. Yes; however, some of them may be billed.

Q. Yes; but they would not be billed if they were no bills?

A. I mean, before I can take them.

Com. PATTERSON. Is that satisfactory?

Mr. BURCHMORE. No; not to me, it isn't.

Mr. LE FORGEE. I think it fills the bill exactly.

Mr. BURCHMORE. It isn't at all satisfactory to me. I would like to see an example of just one switch ticket that said on it "set out for bill," so that I can show what it really meant.

By Mr. LOVERING:

Q. Can you get some of those?

Mr. BURCHMORE. I don't ask him to stop and find it now, if they haven't got one already, but if they have got one, all right.

Mr. LOVERING. I think it is already in the exhibits.

982 Mr. BURCHMORE. I will search the exhibits.

By Mr. STRASSER:

Q. When you get the instructions you don't know of your own personal knowledge whether the cars have been billed or not, do you?

A. No.

Q. All you know is you are to set out for bill?

A. That is right.

Com. PATTERSON. Well, all he knows is what it says on the switch list.

Mr. BURCHMORE. Well, I want to see a switch list that says that, because I think we are talking about two different things.

Com. PATTERSON. Can you produce a switch list?

Mr. BURCHMORE. I think some of those switch lists were produced yesterday, I haven't checked them through.

By Mr. LOVERING:

Q. When the plant is working under normal conditions, how many cars would you be apt to have on the hold track?

A. Empty cars to take care of the plant?

Q. No; the loads sent out to bill, how many cars would you be apt to have on the hold track at that time?

A. I couldn't answer that question. That is a question that is handled by a clerk and sometimes it may vary.

Q. In other words, there is no fixed number of cars out there, it varies from day to day, according to the business?

A. Yes, sir.

983 Q. Some days would it be a few cars?

A. Yes.

Q. How many cars would you have, can you estimate approximately?

A. I would rather not guess a number.

Q. Do you ever receive telephone instructions when you are in various parts of the plant, for instance, down at Elevator "C"?

A. If I am out to Elevator "C," I call up the clerk there to see if he has any work in that vicinity before I go back in the plant or he calls me or leaves word for me to call.

By Mr. BURCHMORE:

Q. Call the Wabash clerk?

A. The Wabash clerk calls me.

By Mr. LOVERING:

Q. What records do you make of those instructions?

A. I usually write them down on one of the cards that I happen to have or any piece of paper that is convenient, to keep my memory fresh so that I don't misconstrue the car numbers.

Q. Have you ever had occasion to push cars on tracks 1 to 4, Elevator "C," unloading tracks, especially in cold weather?

A. Well, yes. In cold weather, though, they don't seem to do so much business there.

Q. Did you ever take beans to Elevator "A"?

A. To Elevator "A"? I take beans to Elevator "B."

Q. Did you ever take them to Elevator "A"?

A. I didn't.

Q. Did you ever take any corn to Elevator "B"?

984 A. I didn't do that, either.

Q. What would you expect to happen if you did?

A. I don't care to guess about that, either.

By Com. PATTERSON:

Q. Well, you would not know what was in the car, except what the switch list showed, would you?

A. That is all.

Q. If you had a switch list that showed a car of beans and it happened to be corn, you would put it where the beans belonged?

A. That would not be any misfortune of mine.

Q. No, but you would put it where the beans belonged, would you not?

By Mr. STRASSER:

Q. Well, Mr. Thompson, if you made a mistake of switching anywhere, you would expect to hear from it, would you not?

A. Yes, sir.

By Mr. LE FORGEE:

Q. From the company?

By Mr. STRASSER:

Q. I mean outside of the plant, at any other plant?

A. I would expect the Wabash Railway supervising officials to——.

By Mr. LOVERING:

Q. Did you get any complaints as to delays in doing your work? Do you have them taken up with you, either by the Wabash or the Staley people?

A. Oh, yes. Yes, indeed I have.

Q. From whom do those seem to come, direct from the Staley people to you or from various units?

985 A. No, sir; from the general yardmaster direct to me.

By Com. PATTERSON:

Q. He is pretty tough, is he?

A. He can be if he wants to be.

By Mr. LOVERING:

Q. Just give us an idea of the general run of those complaints. Is it delay in service or for other reasons?

A. Delay in service.

Q. Just one more question about those beans and corn going—beans going to "A" and corn going to "B." Aren't those cars carded so that you know what is in them?

A. They are not carded, we don't work on the card system. The cars are listed on a list.

Q. On a switch list?

A. That is what governs my handling.

Q. On a switch list?

A. Yes, sir.

By Com. PATTERSON:

Q. Do you mark the cars for your own information or do you switch them from the list?

A. I mark the cars on the list for the convenience of the rest of the help.

Q. You chalk them?

A. Yes, sir.

By Mr. LOVERING:

Q. In the handling of your work, do you pay any attention as to whether cars are interstate or state?

A. No, that does not concern me.

986 Q. You have nothing to guide you at all in that respect?

A. Not at all.

Q. There has been some testimony here previously, I don't recall just what it was, in connection with intraplant moves. Will you give us just an approximate idea or estimate as to the number of intraplant moves that you might have on one trip?

A. Well, that would vary from day to day. Some other engine might have it and I would not know anything about it.

Q. Do they occupy any appreciable portion of your time?

A. I can't say—I would not say they did.

Q. Mr. Thompson, did you hear the testimony yesterday of Mr. Wall?

A. Yes; I believe so.

Q. Can you state whether or not, as far as you can tell, what he stated about the conditions as of the time he was here last fall represented a true and correct statement of those conditions?

Mr. LE FORGEE. That isn't proper nor even competent.

Com. PATTERSON. Well, he can express his opinion for whatever it is worth, whether he could subscribe to Mr. Wall's testimony.

Mr. LOVERING. I am simply asking him to state whether in his opinion there is anything incorrect, and if so, we would like to know it, as of that time.

Com. PATTERSON. Well, I think that is going a little too far, whether there is anything incorrect.

987 Mr. LE FORGEE. The credibility of Mr. Wall's testimony is up to the Commissioner, not the witness. He told his story.

Mr. LOVERING. Well, all right.

By Mr. LE FORGEE:

Q. If he had made a mistake, would you know it?

A. I might have.

Mr. LE FORGEE. Might and might not.

Mr. LOVERING. He heard his testimony and the only question I have in mind there, Mr. Commissioner, is whether or not it agrees in substance with——

Com. PATTERSON. If there is any objection to that, you can ask him all the questions that you asked Mr. Wall, if you want to.

Mr. LOVERING. Not me. I don't want to keep everybody here that long.

Com. PATTERSON. You can shorten it up that way.

Mr. BURCHMORE. I don't think it shortens it any. I think this: He has a pretty good opinion of Mr. Wall, he would not like to say anything to disagree with him unnecessarily. It just leaves me helpless, that sort of a question. I wish you would ask me what I thought of Mr. Wall's testimony. I think it was fine, I wish he could have gone farther.

Com. PATTERSON. Is that all?

Mr. LOVERING. Nothing further.

Com. PATTERSON. Cross-examine.

988 Mr. BURCHMORE. I would like to have just one minute here. Could we have a little recess?

Com. PATTERSON. Yes; I think we better take a recess.

(A short recess was taken.)

Mr. BURCHMORE. Mr. Commissioner, I would like to inquire about one matter, not perhaps very important, but it is definite.

Cross-examination by Mr. BURCHMORE:

Q. I am showing you Exhibit 30, the third page, which was described by a previous witness as a switch list, I believe, and which is dated September 30, 1939. This is a photostated copy but it is in the handwriting of an Interstate Commerce Commission man, who copied the original. Is this one of the switch lists that you have been talking about?

A. It is one of that same type.

Q. Well, down there towards the bottom of it is this entry: "4-A"——

A. Which page are you——

Q. The third page of Exhibit 30. There is an entry that reads: "4-A, pull loads, set out for bill." Now, I suppose that would mean, 4-A would be a track, would it not?

A. 4-A is a track; yes, sir.

Q. There are no car numbers in connection with that instruction "pull loads, set out for bill." There are no car numbers shown. Now, is that the sort of thing you find on a switch list, pulling for no bill?

989 A. In that particular case, yes.

Q. Now, you as switch foreman, if you had been the foreman that handled that particular day, and I don't think you were.

A. No.

Q. That is all you would have known about those cars?

A. I would have gotten all the loads.

Q. And this thing that is shown here on this switch list is all you would have known about them?

A. Yes, sir.

Mr. BURCHMORE. That is all.

Com. PATTERSON. I want to get that straight now.

By Com. PATTERSON:

Q. You would have taken the loads out of there that day and set them aside and when you got ready to go over to your Wabash yard you would have taken them with you as no bills?

A. Yes, sir.

Mr. BURCHMORE. The witness who offered Exhibit 30, Mr. Garman, you may recall, Mr. Commissioner, read into the record what the switch foreman actually did with regard to that particular entry.

Com. PATTERSON. I did not remember that.

Mr. BURCHMORE. Yes; he did. Now, Mr. Commissioner, in the interest of saving time and avoiding useless cross-examination, may I ask to reserve the privilege of recalling Mr. Thompson before the hearing closes should we find that appropri-
990 ate?

By Com. PATTERSON:

Q. You will keep yourself available, Mr. Thompson?

A. Yes, sir.

Com. PATTERSON: Is that all? Any other cross-examination? (No response.) That is all.

(Witness excused.)

Mr. BURCHMORE. At this time, may I ask, Mr. Commissioner, to restore to the reporter and for the record Exhibit 25, which we withdrew yesterday, and we have made copies which I would like now to hand counsel as their copies of Exhibit 25.

J. E. BAUER was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Will you state your name and occupation, please?

A. J. E. Bauer, yard clerk in the Staley yard.

By Mr. BURCHMORE:

Q. Yard clerk for Staley, you say?

A. In the Staley yard.

By Mr. LOVERING:

Q. By whom are you employed?

A. By the Wabash Railway Company.

Q. How long have you been occupying your present position?

A. It will be two years the 10th day of next month.

Q. Do your duties require you to have anything to do with the movement of cars except those destined to and from the
991 Staley Manufacturing Company?

A. No, sir.

Q. What records do you keep?

A. We maintain records covering the inbound and outbound movement of cars, and compile demurrage reports.

Q. Do you maintain any yard checks?

A. Yes, we make frequent yard checks.

Q. What time?

A. The first check is taken at about 7:00 A. M. and covers a complete check of the entire yard. Then the yard is checked again in the afternoon about 2:00 o'clock. That is a partial check of the yard within the confines of the fence only; we don't go outside.

Q. Does that 2:00 P. M. check cover all cars or just certain parts of the yard?

A. It is just a partial check of the yard; we don't check any platforms at that time.

Q. No platforms are checked on the 2:00 P. M. check?

A. No, sir.

Q. What is the next check, if any?

A. At 10:00 P. M.

Q. What other records do you keep? I would like to cover first the records you keep in your office before I ask you questions about them. What other records do you keep in your office there besides the yard check?

992 A. We have a daily car handling report on which we post all cars inbound and outbound, both loads and empties, and we maintain a card record.

Q. All right, you have spoken about a 7:00 A. M. yard check. What territory does that cover?

A. The 7:00 A. M. check covers the entire yard, that is, all of the tracks inside the fence. It also covers the Burwell Yard and the mill tracks at Elevator "C" and the eastbound storage yard.

By Com. PATTERSON:

Q. How do you get that yard check, by actual count of the——

A. Physical check.

Q. Physical check. Are there other checks, physical checks, or just the 7:00 A. M. check?

A. All of them are physical checks.

Q. But not all of them complete?

A. No.

By Mr. LOVERING:

Q. You referred to that 7:00 A. M. check as including the eastbound storage yard. Where is that located?

A. That is located just north of the Staley plant yard, and towards the west end of the plant yard.

Q. Is that out in the Wabash main yard?

A. Yes, sir.

Q. What cars are out there that you check?

A. We don't check those yards; we don't go outside the fence.

993 Q. You say that 7:00 A. M. check includes the——

A. That check—I should have stated, probably, that check is given to us by a yard clerk from East Decatur, who makes the check himself.

By Com. PATTERSON:

Q. But are those cars included as cars in the possession of Staley?

A. Yes, sir.

Mr. BURCHMORE. Which cars?

Com. PATTERSON. Cars that are out in the Wabash yard.

The WITNESS. In the eastbound storage yard.

By Mr. BURCHMORE:

Q. Carded as being in Staley's possession if they are in the eastbound storage yard?

A. What I mean by that is, they are still under demurrage.

By Mr. LOVERING:

Q. Are those cars, cars that are inbound or outbound?

A. Those are the outbound cars.

Q. What territory is covered by the inside check?

A. You mean the first check in the morning, at 7:00 A. M. check?

Q. That is right, the 7:00 A. M. check.

A. All tracks.

Q. Is that inside the wire fence?

A. Inside the fence.

Q. What information is contained on these yard checks?

A. It shows the car initials and numbers. If a load, the contents is shown, and whether or not the car is an empty.

994 By Mr. LE FORGEE:

Q. Do you have one of those?

A. Sir.

Q. Do you have one of those with you?

A. No, I don't. I am sorry.

By Mr. LOVERING:

Q. When do you report a car as having arrived? When is a car considered as having arrived?

A. Are you speaking of a new arrival, that is, a car from——

Q. That is right.

A. We book the cars in when they first appear in the Burwell Yard. That is, with the exception of the cars which are designated, that is, the miscellaneous loads through No. 1 Burwell which are designated to a certain unloading point and should be placed immediately upon their arrival. If they have them spotted before 7:00 A. M. they are booked in at that time. If not, we book them in at the time they are placed.

Q. Is it correct that when a car shows up on this outside 7:00 A. M. check, it is regarded as having arrived?

A. Yes, sir.

Q. What do you do with that information?

By Com. PATTERSON:

Q. Just a minute. Is a car shown as having arrived when it reaches the Burwell Yard or do you wait until you get it in the plant?

A. No; we book them in when they appear in the Burwell Yard.

By Mr. LOVERING:

Q. What is done with the information on this yard check, contained on this yard check?

995 A. We use that to determine the cars which have arrived since the previous check.

Q. What do you do with that information?

A. We post the cars on the daily car handling report under the inbound.

Mr. BURCHMORE. Mr. Lovering, would you wait just a minute? I want to see if we can shorten this. Just a minute.

Mr. LOVERING. Yes.

(Discussion outside the record.)

By Mr. LOVERING:

Q. To what extent, Mr. Bauer, do you telephone to crews giving them instructions as referred to by Mr. Thompson a few minutes ago?

A. Oh, that may happen once a day, sometimes twice.

Q. Do you have anything to do with the grain releases?

A. Yes.

Q. Do you receive them from all roads or as from the Wabash only?

A. We receive them from all roads.

Q. Who gives them to you?

A. The agents.

Q. I beg your pardon?

A. The agents.

By Mr. STRASSER:

Q. What agents?

A. The freight agents.

Q. Well, what freight agents?

A. Of the five different roads in Decatur.

996 By Mr. LOVERING:

Q. Well, do you receive them direct from the agent at each individual road?

A. Yes, sir.

Q. The Wabash agent telephones to you and the Pennsylvania agent telephones to you?

A. No; we call them.

Q. You call them?

A. Yes, sir.

Q. You don't clear with the connecting line through your own agent?

A. I don't understand that.

Q. You don't get all your information from your own agent, you telephone and get connecting line information from the agents of the connecting lines?

A. You mean on the grain releases?

Q. On the grain releases.

A. No; we call each individual line.

Q. And what do you do with the information you get on these grain releases?

A. We post that on a card record.

Q. On a switch list?

A. Switch list.

Q. Pardon me, on a track check or switch list?

A. One of those forms, and when the car arrives at the Burwell Yard, we check that against our grain releases to see that
997 the car is placed on the proper track, and at that time we check it off of the grain releases.

Q. Do you place that information contained in the grain release—speaking now of the Wabash—is that information contained in that grain release? In what form is that given to the switch man?

A. The information on that given to the switch man is that we mark it on a copy of the 7:00 A. M. track check; opposite the car number we mark the elevator to which this car is consigned.

Q. At the hearing in this same proceeding in Chicago, in 1938, it was stated that intraplant switching confirmations were turned over by Staley to the Wabash that same evening. Do you still have any such a thing as intraplant switching confirmations?

Com. PATTERSON. I did not get that. Will you read it, please?

(Question read.)

The WITNESS. Yes; we receive switch tickets every day.

By Mr. LOVERING:

Q. How are they designated, any form number given to them, or how do you commonly refer to them?

A. There is a form number on them. I don't know that I can recall it.

By Mr. BURCHMORE:

Q. From whom do you, Mr. Bauer, receive the switch ticket?

A. They are given to me from 20 Building.

998 Q. Sent over by messenger?

A. Yes; they are delivered by messenger.

By Mr. LOVERING:

Q. How do you refer to them in the course of your daily work? Do you have any nickname or anything of that kind by which——

A. Switching tickets.

Q. Beg your pardon?

A. We call them switching tickets.

Q. Do you give them any information which they might be able to use in preparing those?

A. Yes; I phone a list of those cars which were moved in intraplant service.

Q. That covers the intraplant movements?

A. That covers the intraplant movements only on the switch list to the 20 Building in the morning.

By Com. PATTERSON:

Q. That is the Staley——

A. 20 Building is the Staley office.

By Mr. LOVERING:

Q. From what source do you get your information that you use in making up this data?

A. I go through my copies of the switch list for the previous day.

Q. Then do you telephone this information to Building 20?

A. Yes, sir.

Q. What information do you send them?

A. Give them the car initials and number and the con-

999 tents, the track it was moved from and the track it goes to.

Q. When do you send them this information?

A. I telephone it to them the first thing in the morning.

Q. You telephone it to them at the beginning of the next business day; is that it?

A. That is right.

Q. By the way, right there, is this a seven-day-a-week proposition down there?

A. Yes, sir.

Q. When they send these 1592's back to you what information do they contain at that time?

A. They show the car initials and number and the contents, the track from which they moved and the track to which they move, whether or not it was a move for transfer, finish load, change part load, and so forth.

Q. Do you get those 1592's at various times throughout the day or are they returned to you all——

A. Just once a day.

Q. Once a day. What do you do with this information as you receive it from Building 20?

A. I post my card that I pick them off on to show which cars was transfers, finish loads, and so forth.

Q. Do you add anything to the information they have then given you?

A. I place a number on these in the upper right hand
1000 corner, place my signature in the lower right-hand corner.

Q. Is that a serial number that you use for that purpose?

A. Yes, sir.

Q. Or a form number?

A. Serial number.

Q. What number does it start with, any particular——

A. 25,000 on the first day of each month.

Q. Do you add any information on there in case a car has been weighed, do you add any information on that to be passed along to your agent?

A. Yes; I do.

Q. What do you do with these 1592's after you have added on such information that you have just indicated?

A. They are furnished to me in triplicate. I mail the original to the Wabash freight agent and two copies are returned to 20 Building.

Q. Did you receive, yourself, any complaints of any kind from the Staley Company?

A. Very few.

Mr. LOVERING. I have nothing else, Mr. Commissioner.

By Com. PATTERSON:

Q. You say these lists that come over to you state on the switching ticket what was done to the car, whether it was finished load or whether it was transferred?

A. Yes, sir.

Q. Who puts that on?

1001 A. The Staley Company.

Mr. BURCHMORE. May I ask him to identify this, and I have a question, I think, too, that will help make that clear to you, Mr. Commissioner.

Com. PATTERSON. Go ahead.

Cross-examination by Mr. BURCHMORE:

Q. On this question of the intraplant switchin, is this paper that I hand you one of these form 1592's that you spoke of?

A. Yes, sir; that is one of them.

Q. It bears No. 1592 in very small type in the extreme upper left-hand corner?

A. Yes.

Q. The form number?

A. Yes.

Mr. BURCHMORE. May I ask that this be marked for identification as Exhibit 36?

(Exhibit 36, Witness Bauer, marked for identification.)

By Mr. BURCHMORE:

Q. Now, this document marked for identification as Exhibit 36 bears date April 16, 1940, and relates to car, Wabash 83141, and I see the name "Bauer" on there. Is that a carbon impression of your signature.

A. Yes, sir.

Q. Now, this is one of those confirmations that you have been referring to?

1002 A. That is right.

Q. And this particular one covers what service performed?

A. Yes.

Q. What service, I say?

A. Well, as it is stated here, the car moved from 2-B-17 to 7-B-20, and, as the reason here, to finish load.

Q. Would that mean that this was a car which, at the first location named, had been partly loaded and they wanted it moved over to another location to finish loading, after which it would be shipped to Chicago or Baltimore or somewhere?

A. That is correct.

Q. Just as a matter of coupling this up, do you happen to know that for that movement represented by that ticket Staley would pay $1.98?

A. That is my understanding; yes, sir.

Q. Now, was the purpose of this confirmation, or of the original document of which this a carbon impression, was the purpose of that, so that your company, through its proper channels would be enabled to collect the money for that car?

A. Yes, sir.

Q. Now, then, as to that particular paper there, do I understand you said that this was made out on either the 16th or 17th as the result of information conveyed to the Staley Company with regard to a movement which, at the time it was made out, had already taken place?

1003 A. That is right.

Q. Now, before that movement took place, were you in some way asked or told by the Staley Company that they wanted you to move that car?

A. Yes, sir.

Q. And how had you, Mr. Bauer, how had you gotten that information?

A. We get it through the medium of the switching instruction.

Q. They had instructed you to move that car to finish loading, from one place to another place?

A. That is right.

Q. And you instructed your switching crew to do it, did you? You, Mr. Bauer, instructed them to do it by a switch list?

A. That is right.

Q. And the crew did it and reported to you that it had been done by an entry on the switch list?

A. No; I stated that when I picked these off, I picked them off of our carbon copies that we keep of every switch list we prepare. I go through them every morning and pick out those cars we moved in intraplant service.

Q. Then you ask Staley to give you a confirmation?

A. Yes, sir.

Mr. BURCHMORE. I will ask to have this marked Exhibit 37.

Com. PATTERSON. It may be identified as Exhibit 37.

(Exhibit 37, Witness Bauer, marked for identification.)

1004 By Mr. BURCHMORE:

Q. I will show you one other. Is this a form 1592 of April 16th, simply involving another transaction?

A. Yes, sir.

Q. Now, what was the car number of this particular transaction?

A. 79008.

Q. Wabash car, 79008?

A. Yes, sir.

Q. And according to this Exhibit 37 document, what would you say was the performance that was covered?

A. This ticket covers the transfer of a car of corn that was moved from Elevator "C" to Elevator "A" to unload.

Q. Well, now, that was not a completion of unloading or anything, it was a movement of grain that went into the car at Elevator "C" and it was moved over by you to Elevator "A" and it was unloaded?

A. That is right.

Q. And, according to your information, Staley would pay $3.40 for that movement?

A. That is according to my understanding, yes.

Mr. LE FORGEE. $3.47.

Mr. BURCHMORE. $3.47.

The WITNESS. $3.47.

By Mr. BURCHMORE:

Q. And the purpose of this bill, or the original of which it is a carbon impression, was to enable the Wabash to collect $3.47 from Staley?

1005 A. Yes, sir.

Q. And this transaction hadn't any relation to some former movement, coming into the plant. Of course, the grain did come in by rail, but this wasn't tied up with any previous line haul shipment?

A. Not to my knowledge.

Q. Well, if it was, then it should not take the $3.40, isn't that right?

A. I am not familiar with that part of it.

Q. Well, I am trying to get at something. Insofar as this paper would indicate to your mind, it was a case of a movement within the plant of grain?

A. Yes, sir.

Q. This Exhibit 36 covers the car described as a car of syrup, and Exhibit 37 is a car of corn. We would furnish other counsel copies of the form, but do you want the entries?

Mr. LOVERING. No.

By Mr. BURCHMORE:

Q. Now to be sure I am right about it, aren't these two tickets, Mr. Bauer, typical of the confirmations of all of them?

A. Yes.

Mr. BURCHMORE. We ask that Exhibits 36 and 37 be received.

Com. PATTERSON. They are received and identified as Exhibits 36 and 37.

(Exhibits 36 and 37, Witness Bauer, received in evidence.)

1006 By Mr. BURCHMORE:

Q. I would like to ask only one other matter, Mr. Bauer. The yard check that you spoke of at 7:00 a. m., the yard check of cars in what we call the Burwell Yard, I may have misunderstood you, I thought you said that yard check was prepared by the East Decatur man?

A. That is right.

Q. Some man from East Decatur?

A. The yard clerk from East Decatur yard office.

Q. He visits the tracks each morning and checks the cars on those tracks?

A. Yes, sir.

Q. And prepares a yard check and furnishes it to you?

A. He delivers them to us at the Staley scale house.

Q. Personally delivers them to you?

A. Yes, sir.

Q. And he is responsible for the correctness and accuracy of that portion of the yard check?

A. As far as the car numbers and initials are concerned.

Q. You are not responsible, he gives it to you?

A. Yes, sir.

Q. Then you use it. Well, now, then the yard check of cars within various parts of the plant, we will say, for instance, the coal tracks, who is the man or who are the men that see those cars and put down their numbers each morning at 7:00 o'clock?

1007 A. The third trackman makes the 7:00 o'clock check.

Q. And he checks the same district that you do?

A. Yes, sir.

Q. But at a different hour?

A. That is right.

Q. And you make the same ultimate use of the yard check he gives, the 7:00 a. m. check that he prepares, that you make of the one that comes to you from the East Decatur man?

A. Yes, sir.

Q. And that is your regular routine, day by day?

A. That is right, daily routine.

Mr. BURCHMORE. That is all of Mr. Bauer.

By Com. PATTERSON:

Q. Mr. Bauer, these Exhibits 36 and 37, did you state that these shipments come over to you from the Staley Company?

A. Yes, sir.

Q. It states on the shipments the reason for the intraplant movement; one of them states finish loading and the other is marked transfer?

A. Yes.

Q. And is signed by Bauer. How do you know whether this car was finished loading or whether it was transferred, other than the information that Staley furnished you?

A. I can refer on that—in the case of that car there that says finished load——

1008 Q. Yes.

A. On the one that says finished load——

Q. One says finished load and the other says transfer.

A. Yes, and that one that says finished load, you can refer to our yard check the following morning, and—I think it is 7–B–20 that car moved to, is that right.

Q. Yes, it moved from 2–B–17 to 7–B–20.

A. We can refer to our yard check of 7–B–20 for the following morning; it will undoubtedly show that car as a car of syrup.

Q. Well, do you do that? What I am trying to get at is——
A. Yes; quite often; yes, indeed.
Q. Do you always do it?
A. I don't, on each and every car; no.
Q. No. Then you don't, yourself, know whether this car was—all these cars were finished loading or whether they were transferred?
A. No, I can't say that I would myself.
Q. Who does know besides the Staley Company?
A. Well, I don't know that we would.
Q. No, you would not know?
A. No, sir.
Q. You mean by "we," the Wabash Railroad?
A. That is right.
Mr. BURCHMORE. I think the tickets are signed at the bottom by J. H.——
1009 The WITNESS. Seibert.

By Com. PATTERSON:

Q. Who is he?

By Mr. BURCHMORE:

Q. He is a Staley employee, is he?
A. He is the man at 20 Building.

By Com. PATTERSON:

Q. He is a Staley employee?
A. In charge of that office; yes, sir.

By Mr. BURCHMORE:

Q. And you have put your name on here to show that they are right?
Com. PATTERSON. Yes, but he does not know that they are right. He puts his name on to show the car, but he does not——
Mr. BURCHMORE. I think he does.
Com. PATTERSON. Well, he just said he didn't.
Mr. BURCHMORE. Well, let's see, Mr. Commissioner. I don't suppose anybody goes up to the tank and sticks their finger in and tests it to see if it is really glucose.
Com. PATTERSON. Well, is that supposed to be funny?
Mr. BURCHMORE. I meant it to be, yes; entirely. But I am asking this:

By Mr. BURCHMORE:

Q. As I understood the history of that transaction, you did on car Wabash 83141 have a telephone request from Staley to switch that car from Building 17 to Building 20 to complete loading. That is what they told you, was it?

A. Usually in listing that car from—like in that case from 2–B–17 to 7–B–20, on the switch list they would not tell us to finish loading necessarily.

1010 Q. But they would say to switch it from one to the other?

A. Yes, sir.

Q. And you instructed your foreman by putting it on a switch list to go and switch it?

A. That is right.

Q. And then he reports daily by turning back his switch list, that he has actually switched it?

A. Yes, sir.

Q. And then the next day, the same day or the next day, you get this confirmation on which Staley says that the reason was to finish loading?

A. Yes.

Q. And then you do actually get—if that is true on that particular car, you actually do get a bill of lading if it is to go over the Wabash, or an order from the Illinois Central if it is to go out over the Illinois Central, that indicates that that same car does go out as a shipment?

A. I never see any bills of lading on any of the cars.

Q. But you get an order from the Illinois Central that says to you, take this car for our account and bring it over to us?

A. No, I get my delivery instructions, that is, on cars of that nature, from the Wabash freight agent.

Q. Oh, from the Wabash freight agent as part of the chain, and he probably has gotten it from the Illinois Central?

A. That is right.

1011 Mr. BURCHMORE. Well, it seems to me that there is perhaps there a little element of the Staley Company not misrepresenting that it is to finish loading when it isn't. Of course, it is subject to such check as there always is in such matters.

Mr. LOVERING. No question about such misrepresentations at all, so far as I am concerned.

Mr. BURCHMORE. I was facetious about sticking your finger in, that is all.

By Exam. WEAVER:

Q. Mr. Bauer, the check you make of the Staley yard, is that for demurrage purposes?

A. Yes, sir.

Q. Well, are the cars—why do you start computing time first on the grain, in-bound grain?

A. The time is computed——

Q. Where is the car placed before you start counting time?

A. It is in the Burwell Yard.

Q. Not on the grain inspection track?
A. No, sir.
Q. And is that true as to all in-bound materials for Staley?
A. No.
Q. That the time is computed when it arrives, or rather, you start counting the time when it arrives at the Burwell Yard?
A. No; not in all cases.
Q. What are the exceptions?
A. In cases of these cars that are designated for a certain
1012 building location.
Q. That is, miscellaneous commodities?
A. Miscellaneous commodities. If those cars are placed at the unloading point, that is, at that particular building where they belong, prior to 7:00 a.m., we book them in prior to 7:00 a. m. If they are not, then we book them in at the actual time they are placed there.
Q. You compute the time, then, on the grain at Burwell Yard and all other commodities at the point of unloading?
A. Well, I might say there that the grain and the coal also is booked in when it appears in the Burwell Yard.
Q. Now, on the out-bound loads, where is the car when you start counting the time on an out-bound loaded car?
A. We book in the empty for out-bound loading at the time the car is placed for loading.
Q. At the loading point?
A. Yes, sir.
Q. And you release it where?
A. At the time that we receive notification that the car is to be delivered.
Q. Well, where is the car when you release it from demurrage?
A. Sometimes, they may be inside the plant and they may be out in the east-bound storage yard.
Q. If it isn't placed in the east-bound storage yard, is it at the point where it is loaded?
1013 A. Yes.
Exam. WEAVER. That is all.
The WITNESS. In most cases. Once in a while it might be in a cut that they are building up to take outside. It could be that.
Exam. WEAVER. I didn't understand.
The WITNESS. I say, in most cases they are at the point of loading. However, they may have been removed from that point and be in a cut that they are building up to take outside to the east-bound storage yard. We find some of them in those cuts.
Exam. WEAVER. I see.

By Com. PATTERSON:

Q. This east-bound storage yard is a Wabash yard?

A. Yes, sir.

Mr. BURCHMORE. If that is particularly important or significant, I would like to develop it a little.

By Mr. BURCHMORE:

Q. Mr. Bauer, do you have anything to do with any matters of demurrage on the car record as to any consignees or consignors at Decatur, other than Staley?

A. Yes; I keep the demurrage account, that is, the demurrage report, rather, for the Mississippi Valley Structural Steel Company.

Q. But for any others?

A. No, sir.

Q. Just that one. Now, when do you figure demurrage
1014 starts to run on shipments that are consigned and delivered to the Mississippi Valley Structural Steel and placed at the unloading tracks in their plant?

A. At the time they are placed.

Q. At the time they are placed at the unloading point?

A. At the unloading point; yes, sir.

Q. Do you happen to know whether that is in accordance with or different from what the Wabash does on shipments consigned to the Decatur Milling Company, for instance?

A. No, I do not. I don't know.

Q. Have you any reason to suppose that what you are doing is different than you do at other industries here in Decatur?

A. I should not think so.

Q. You haven't any reason to suppose it is different?

A. No.

Mr. BURCHMORE. That is all.

Mr. LE FORGEE. Just one question.

By Mr. LE FORGEE:

Q. Do the bills of lading come to you and——

A. No, sir; they do not.

Q. Do you have occasion to examine them, or take any steps in relation to the provisions of the bill of lading?

A. No.

Q. The only thing in the world that you know about the entire transaction is what you have related here?

A. That is right.

1015 Q. And that is based upon information which largely comes to you by telephone?

A. Yes, sir.

Q. And the communications of the Staley Company?

A. Yes.

Q. And do they communicate with you in relation to these slips which you have identified as Exhibits 36 and 37?

A. Yes, sir.

Q. And, outside of the transaction or of the delivery, other than the making of those reports, you know nothing?

A. I do not.

Mr. LE FORGEE. That is all.

Mr. LOVERING. I have nothing else so far as I am concerned.

Com. PATTERSON. Anything more? [No response.] That is all.

(Witness excused.)

Mr. LE FORGEE. Is that your case, Mr. Lovering.

Mr. LOVERING. Not yet.

CHARLES CURRAN, recalled, previously sworn, testified further as follows:

Direct examination by Mr. LOVERING:

Q. Mr. Curran, do the Wabash handle all interchange work with connecting lines?

A. Yes, sir.

Q. That covers deliveries to those lines of Staley cars
1016 and also receipt of Staley cars?

A. Yes, sir.

Q. Is that the duty of any particular switch crew?

A. The duties of several of them.

Q. Is there any one man that gets more of that on his job than any other one, on the west end?

A. It is divided up over a period of 24 hours.

Q. All right, take the day shift, does any one crew do that, or is that handled by several crews also?

A. Well, we try to have one crew do the bulk of it, but the other crews will assist.

Q. When they are taking those cars from the interchange, is any work done on those cars in the vicinity of the interchange tracks before they are taken down to the east end of the east yard?

A. What cars are you referring to?

Q. Taken from the interchange, Pennsylvania, Illinois Central——

A. Well, we receive loads from the connections, interchange, for various consignees, also for various directions for line haul; and in handling the interchange tracks the cars for industries west of the Illinois Central crossing are held in that vicinity of the yard,

cars for line haul and cars for industries east of the Illinois Central are placed on the tracks east of the Illinois Central crossing. From there they are taken to our east-bound yard.

1017 Q. By the way, the crossing you have mentioned is the crossing shown, I believe, on Exhibit 1, as being in the vicinity of the Wabash passenger station?

A. Yes; it is south of the station.

Q. When this crew gets these cars down to the east end, these Staley cars, do they take them in at the switch near Brush College Road and classify them on the leased tracks?

A. They are taken into the switch.

Mr. BURCHMORE. Mr. Commissioner, just a moment. This gentleman is being recalled and we are all trying to be brief and he is being recalled and is being asked leading questions that are leading to something. Now, can't we fairly have a statement of what it is that is to be corrected here, or changed?

Com. PATTERSON. Yes; what do you want to show by him?

Mr. LOVERING. I am calling him as my own witness on direct examination to bring in some additional details which I don't think have been brought in.

Com. PATTERSON. Yes, but what——

Mr. LOVERING. I don't think it is in the record clearly whether or not the crew which handles the interchange with various connections takes those cars down and classifies them in on the Wabash-Burwell Yard tracks, or whether they take them down and leave them in the east yard and some other crew handles them. I don't think there is any connection.

Com. PATTERSON. Let me ask this question: What hap-

1018 pens to these cars that come from the interchange? Just trace them through if that isn't in the record. I thought it was.

Mr. BURCHMORE. I thought it was.

By Com. PATTERSON:

Q. What happens to them?

A. They are taken out to the east end of our east-bound yard and the miscellaneous cars are switched on Burwell 1.

Q. The first crew that takes——

A. The crew that brought them out there.

Q. Takes them from the interchange?

A. Takes them from the interchange. The miscellaneous cars are switched to Burwell 1, the "A" grain is switched to Burwell 2, the "B" grain is——

Q. Well, is that just the same as they do with cars that are coming from your own yard?

A. No; cars of grain coming from our own yard go on our federal inspection track. This grain that comes from connecting lines has all been inspected on those lines.

Q. I see.

A. They classify it out there as to "A" grain on Burwell 2, "B" grain on Burwell 3, "C" grain on Burwell 4, and 5 Burwell is held for overflow.

Q. Let me say this: It may shorten it up. This locomotive that gets the cars from the interchange tracks, he brings them over and classifies them into the Burwell yard and then he goes back?

A. That is right.

1019 Q. And that is substantially what you do with other business going over there?

A. He goes to the west end of the east-bound yard and takes a load of city cars for other industries back with him.

Q. We don't care about the details. Then the engine in the plant, he comes out and gets them and takes them in the plant and classifies them?

A. That is correct.

By Mr. LOVERING:

Q. Is there any record kept of the hours of work performed by these crews in doing Staley switching and the proportion of time spent in doing outside switching?

A. What crews do you refer to?

Q. The crews working in the Staley plant.

A. In the Staley plant? The crews that work in the Staley plant do some outside work, and the foreman of that crew shows the time on his time slip that he spent outside of the Staley plant.

Q. And then nothing is said as to the length of time which is charged by your office, is it, against Staley switching, or how do you account for that?

A. We just keep an account of the time spent outside of the Staley plant.

Q. In the case of the crews classifying these cars, that is, this west end engine you just spoke of bringing the interchange

1020 cars down and classifying them on the leased tracks there of the Wabash-Burwell Yard——

Com. PATTERSON. Just a minute. Why do you keep track of this Staley time as distinguished from all other time; do you know the reason for that?

The WITNESS. Do you mean the Staley crews?

Com. PATTERSON. Crews that work in there?

The WITNESS. Crews that work in there? Well, we were asked to do it, is all——

By Com. PATTERSON:

Q. That is all you know about it?

A. And we have always done it.

Com. PATTERSON. I see.

By Mr. BURCHMORE:

Q. Well, in the beginning it was because it was a pool power arrangement by which the cost was spread against the other roads, wasn't it?

Com. PATTERSON. It was a test, I suppose, to show the expense.

By Mr. BURCHMORE:

Q. In the beginning, when you first went in there you were doing pool engine service on behalf of the five railroads, were you not?

A. We did not keep any track of the time spent out of the Staley plant then.

Q. You didn't then?

A. No; because of the pool arrangement. There were five railroads involved, is the reason.

1021 By Com. PATTERSON:

Q. Well, all you know is, somebody told you to do it?

A. When we went in there all on our own; yes.

By Mr. LOVERING:

Q. Does the time spent in doing Staley switching include the time those crews might spent in the—the outside crews might spend in classifying cars in the Wabash-Burwell yard?

A. I don't just understand the question.

Q. Well, when these crews classify cars from the eastbound yard into the Wabash-Burwell, tracks 1, 2, 3, 4, and 5, that you have just mentioned, is that considered as Staley switching or Wabash switching?

A. That is Wabash switching for the west end crews.

Q. In your opinion is the moving of cars out of the west end of the plant, which has been referred to here occasionally as a Wabash convenience or a Staley convenience, loaded cars moved out for bills?

Mr. LE FORGEE. That is calling for a conclusion. Let him tell the facts and the Commission will decide whose convenience it was.

Com. PATTERSON. Yes.

Mr. LOVERING. It seems to me, Mr. Commissioner, that Mr. Curran, by his experience here, is qualified to express an opinion on that point.

Com. PATTERSON. Well, he may be qualified to express an
1022 opinion, but you want him to testify as to whether he has instructions to bring these cars out or whether he brings them out on his——

Mr. LOVERING. I just want to know whether in his opinion he thinks it really is Wabash convenience to move those cars out.

Com. PATTERSON. Well, I don't think he is competent to answer that question.

By Mr. LOVERING:

Q. Have you any cars in the plant there used exclusively in transfer service?

A. Yes, sir.

Q. Between what points?

A. Between Elevator "C" and Elevators "A" and "B," and between the coal yard and the germ meal track.

Q. Do you have for cinder purposes any others?

A. Sir?

Q. Are there any others in addition to those two you have mentioned?

A. Well, there are two or three for cinder loading; yes.

Q. Approximately how many are in service between Elevator "C" and the two elevators you mentioned?

A. Roughly speaking, about 40.

Q. Are those cars suitable for main line service?

A. They are not suitable for main line service.

Q. Do you know whether or not a charge is made for the
1023 use of those cars?

Mr. BURCHMORE. Well, now that is under the tariffs, I suppose; is it not?

The WITNESS. You mean——

By Mr. LOVERING:

Q. Put it this way: Do you know whether or not those cars are leased by the Wabash?

A. They are not leased.

Q. Do you recall the maximum number of cars, loaded cars, for the tSaley Company, that you had on hand during the peak of the season, rush season, last fall?

A. Loaded with grain, you mean?

Q. Yes.

A. Roughly speaking there was at the peak period, as I recall it, 1,000 cars of grain on hand in all positions. I think we had 700 of them in all positions.

Q. Were those all Staley loads?

A. At Staley's; yes.

Q. Mr. Thompson said that—spoke about receiving complaints. Can you state whether or not you received complaints from the Staley Company in connection with the service afforded.

Com. PATTERSON. I think that question has been covered half a dozen times from this same witness.

Mr. LOVERING. All right.

The WITNESS. Not any more than any other industry.

Mr. LE FORGEE. Well, the court said you did not have to
1024 answer.

Mr. LOVERING. That is all I have from Mr. Curran.

Com. PATTERSON. Cross examine.

Cross-examination by Mr. BURCHMORE:

Q. Who is your superior officer on the Wabash Railroad?

A. Superintendent C. A. Johnston.

Q. Do you carry on your activities and work as yard master in accordance with the orders and directions he gives you?

A. Yes, sir.

Q. Anyone else in authority over you?

A. Trainmaster H. B. Pilcher.

Q. Do you carry on and conduct your work in the method and manner and according to the instructions and regulations and policies that this trainmaster and this superintendent gives you?

A. Yes, sir.

Mr. BURCHMORE. That is all.

Com. PATTERSON. That is all.

(Witness excused.)

Mr. LOVERING. Mr. Burwell, I have just one or two questions more I would like to ask you.

T. C. BURWELL, recalled, previously sworn, testified further as follows:

Direct examination by Mr. LOVERING:

1025 Q. At the Chicago hearing you stated that a great crop of corn and beans originated right here in the state. Does that condition still exist today?

A. Absolutely.

Q. Can you give an approximate estimate as to the percentage that is state grain?

A. Practically 100 percent.

Q. I take it that your products out-bound are all corn and bean products, are they not?

A. We ship some cinders, we ship some wheat and we ship some oats, which are not products of corn and beans.

Q. You do have some merchandise business still?

A. We merchandise grain; yes, sir.

Q. In connection with the Chicago hearing you made one statement there, I believe, that you were then getting the best switching serve that you had ever received during your connection with the company. I just want to ask you there if what you had in mind was better switching from the standpoint of more of it or from the standpoint of better operating conditions resulting from the various changes which had been made and improvements made in the plant?

Mr. BURCHMORE. I want to suggest that he was fully cross examined at that time and on that occasion. He explained fully what that meant, and so forth, and if this is trying to get something different or something additional, I would like you
1026 to produce what he said on that occasion.

Mr. LOVERING. The only thing which I am interested in is whether at that time the statement was made that he was getting the best switching service he ever had.

Mr. BURCHMORE. That isn't what this question is, though.

Mr. LE FORGEE. It isn't what you are asking now, is it?

Mr. LOVERING. Read the question.

(Question read.)

Com. PATTERSON. Have there been improvements made in the plant since that Chicago hearing?

Mr. LOVERING. No; they were listed at the Chicago hearing which was based on changes in the plant.

Com. PATTERSON. There were changes in the plant before the Chicago hearing?

Mr. BURCHMORE. That is right.

Com. PATTERSON. Well, is the service any different now than it was then?

Mr. LOVERING. Well, Mr. Burwell referred in that hearing—

Mr. BURCHMORE. Well, let's see just what he said. Will you call attention to the page of it?

Mr. LOVERING. I haven't the copy here.

Mr. BURCHMORE. I have my copy of it. This is a little bit unusual. You are calling him here as your witness, and I object to your witness doing anything—he can do anything he wants but——

Com. PATTERSON. What do you want?

1027 Mr. LOVERING. Just a simple question to determine whether or not the quality of service is still as good as he mentioned.

By Com. PATTERSON:

Q. Well, is the service still as good as it was when you were in Chicago?

A. Oh, it is better.

Com. PATTERSON. Getting better all the time. Does that satisfy you?

Mr. BURCHMORE. The case is getting better and I am and you are and all of us.

By Mr. LOVERING:

Q. As far as the needs of the plant are concerned, has there been any change in the requirements for service since Staley was doing its own switching?

A. There have been some changes, yes, in the matter of simplification.

Q. Will you please state in what respect—I will put it this way: Pardon me, it may save some time. Were those simplifications of the type and the same ones as were referred to and covered in the 1938 hearing in Chicago?

A. Well, Mr. Lovering, we have constantly worked with Mr. Earl Heaney, who was the superintendent of the Wabash Railway up to some four or five weeks ago, and subsequent to that time we have worked with Mr. Johnston, who is a very wonderful superintendent, both of those gentlemen, and we have adopted every suggestion they had to simplify the switching operations in our plant, and we think it is fine.

1028 Q. So far as your own requirements are concerned, have there been any changes in that respect?

A. You mean the number of cars; five or ten or——

Q. In other words, have the needs of the various locations in your plant changed in any respect?

Mr. BURCHMORE. Mr. Commissioner, I want to raise this point. At the Chicago hearing, upon objection from Mr. Nelson Thomas, attorney for this Commission, we were particularly refused the right to develop what the requirements or the conditions were at that time, and we were particularly refused the right to bring out the requirements as of 1936, at the time of the Commission's order. We were only allowed to give the physical changes as against 1931.

Now, then, with that inhibition on us at that time, and we having made what we have tried to make, a full showing here, I don't think that we should be required to let Mr. Burwell, as a witness for the Commission here now, testify about some differences as between now and the time that he wasn't allowed to go into the facts.

Com. PATTERSON. Well, of course, the scope of this hearing is a little different.

Mr. BURCHMORE. I think what Mr. Lovering has in mind isn't quite fair to us. He wants him to say, well, there has been, after all, no change in this plant's requirements as against the

particular time when the requirements were such, as the
1029 Commission said, they were getting an unlawful allowance for those requirements. I think we have cleaned house and there is a totally different situation—cleaned house in the sense of getting rid of every difficulty.

Mr. LOVERING. There was no particular thought of that in my mind, Mr. Commissioner.

Com. PATTERSON. What do you want to show?

Mr. LOVERING. I simply want to bring out his opinion, as the traffic officer of this company, as to whether their requirements in the different parts of his plant, for service, are the same as they used to be, if there has been any change in the past few years.

Com. PATTERSON. Since when?

Mr. LOVERING. Five years, ten years, I don't care—if there has been any in two years.

Com. PATTERSON. If there has been any change in the requirements in two years, you might answer that question.

The WITNESS. Well, I don't know, Mr. Commissioner, at what time now that we put Building 48 in operation. I know that 29 Building wasn't there at the time of the hearing in 1932, or, if you want to know if we load any more starch at Building 20 than we loaded at some other time, I don't know that answer.

By Mr. LOVERING:

Q. Here is the point I had in mind. Take Building 48, for example. Aside from the question of volume, more switches,
1030 more cars, has there been any changes in the requirements of the Building for service?

A. At Building 48? No.

Q. Leaving out entirely the question of the number of switches that were made and the number of cars.

A. There have been no changes.

Q. Is there any change in that type of service?

A. There has been no change at Building 48.

Q. Do you think there has been any appreciable change in the percentage of intraplant switching in recent years?

Mr. LOVERING. That is one point, Mr. Burchmore, that was spoken of, and I don't recall whether Mr. Burchmore estimated the percentage.

The WITNESS. I don't know anything about the percentage of switching. I testified yesterday as to the intraplant switching for the week of the 15th to the 20th, and you can draw your own conclusion from those figures.

Mr. LOVERING. You did, Mr. Burwell. I had forgotten you testified about that. That is all, Mr. Burwell.

Com. PATTERSON. Cross-examine.

Mr. LOVERING. Mr. Commissioner, I can—pardon me.

Mr. LE FORGEE. I don't want to ask him anything.

(Witness excused.)

Mr. LOVERING. If you and the young lady reporter there have sufficient patience, I can finish up here in half an hour.

Com. PATTERSON. Do you have some more evidence to put on?

1031 Mr. LE FORGEE. We have about two witnesses, possibly.

Com. PATTERSON. Well, I think we better come back, then.

Mr. LE FORGEE. Yes; and I can say I think they will be quite brief.

Com. PATTERSON. Two o'clock.

(At 12:30 o'clock p. m., Friday, April 26, 1940, recess was taken until 2:00 o'clock p. m.)

1032 AFTERNOON SESSION

The hearing was resumed pursuant to recess; 2 o'clock p. m.

Com. PATTERSON. Come to order, please.

Mr. LOVERING. Mr. McKinley.

BERNARD H. MCKINLEY was sworn and testified as follows:

Direct examination by Mr. LOVERING:

Q. Will you please state your name and occupation?

A. Bernard H. McKinley, chief clerk to the local freight agent, Wabash Railroad.

Q. How long have you been employed in that capacity?

A. In the present capacity about fifteen years.

Q. Are you familiar with the charges assessed by the Wabash Railroad against the Staley Company for various services performed?

A. I am.

Q. Is it part of your duty to make out the bills to cover that service?

A. Yes, sir.

Q. Do your duties require you to be acquainted with the applicable tariffs and to keep posted with charges?

A. Certain charges, yes; certain tariffs.

Q. For what type of service are charges made?

1033 A. Thirty-five cents for weighing.

Q. No, first, if you please, just the types of service.

A. Weighing, finished load, to complete unloading, spotting charge, intraplant switching.

Q. How about the—in what class do you put transfers?

A. Intraplant switching.

Q. The movements to finish loading?

A. No, an intraplant switch is a movement from one location to another location to fully unload; that is, an empty car that is placed at a certain spot and moved to another to complete the unloading is an intraplant switch, taking the $3.47 charge.

By Com. PATTERSON:

Q. Well, this would include intraplant switching, some of it, wouldn't it?

A. No; your intraplant switching is a car that has been placed at one location and loaded and moved to another location where it is completely unloaded, within the confines of the plant. That is intraplant switching.

By Mr. BURCHMORE:

Q. And then finally spotting, you said?

A. Yes, spotting.

By Mr. LOVERING:

Q. Did you mention a charge for part loading or did you mention that with something else?

A. No.

Q. Do you have a classification of that kind?

A. That is a $3.47 charge. I put that in with intraplant movements.

1034 Q. How about an intrastate spotting charge, do you assess that?

A. And the $2.50 spotting charge; yes, sir.

Q. I just want to run through each one of those very briefly and ask you similar questions as to each one. Will you please state what intraplant covers?

A. The intraplant movement covers an empty car that has been placed at a certain location within the plant, loaded, and moved to another location within the plant where it is completely unloaded, or, if a car has been unloaded and moved and ordered set back to change a portion of the load, that is also assessed at the intraplant rate of $3.47.

Q. What information do you receive to enable you to determine what charge to make for these intraplant movements?

A. We receive switching tickets from our Wabash representative located in the scale house of the A. E. Staley Company.

Q. Are those these forms 1592s we have been talking about?

A. Yes, sir.

Q. From whom do you receive the form?

A. From the Wabash representative in the Staley scale house.

Q. I believe you stated the tariff charge is $3.47 for that service. What is the tariff authority for that charge?

A. It is the Wabash K–5000 and any supplements that may be issued thereto.

Q. Did I understand you to say that the intraplant switching also covers movements known as transfers?

1035 A. Yes, sir; transfers.

Q. Will you please state briefly what you understand by that term "Transfers"?

A. For example, a car of corn that is loaded at elevator C and switched to elevator B, we term that transfer service.

Q. Would that cover any service within the plant where you load a car within the plant at one point and move to some other point within the plant?

A. If it is wholly loaded and completely unloaded within the plant, yes.

Q. What does "change part load" cover?

A. "Change part load" would cover a car that has been loaded at a certain building or location and moved away and ordered back to change part of the load.

Q. What charge is made for that service?

A. $3.47.

Q. The information upon which you base that charge is received in the same manner as previously referred to by you for intraplant switching?

A. Yes, sir.

Q. And you receive that, do you, from the same person?

A. Yes, sir.

Q. What is the tariff authority for that charge?

A. That is Wabash K–5000 and any supplements issued thereto.

1036 Q. What system of checking do you have, if any, to ascertain if you get the number of switching tickets or form 1582s that you are supposed to receive?

A. We have assigned a series of freight bills, numbers, to our representative on their bills.

Q. Is that 25,000?

A. 25,000 series, starting the first of each month, and he enters that number on there and every day as we receive the tickets we check the previous day's last number and the beginning number on that same day and that shows that we have got them all, none has been lost in the mail.

Q. Do you have any system of checking to determine whether or not you have received or you should receive—in other words, if you have got——

A. No, I haven't, I only go by the tickets that are sent to me.

By Com. PATTERSON:

Q. Well, just a minute, at this point, they have a continuity of numbers?

A. Yes, that is right.

Q. If there is a number left out, you would know something about it?

A. I would know about it.

By Mr. LOVERING:

Q. What does "finished loading" cover?

A. Finished loading covers a car that has received—or, no, a car that is going to receive an out-bound line haul movement and is switched from a location partly loaded to another one
1037 to complete loading.

Q. What is the charge for that service?

A. $1.98.

Q. Do you receive the information concerning those moves in the same manner as previously described by you?

A. Yes, we do.

Q. What is the tariff authority for that?

A. Wabash K–5000.

Q. Did you mention respot service?

A. Respots? I believe I did.

Q. What does respot cover?

A. Well, respotting will cover a car also that has been loaded, pulled out, and is respotted either to its original point or another point. It is a railroad term that they use of respotting.

By Com. PATTERSON:

Q. These are all railroad terms aren't they?

A. Yes, that is what they are.

By Mr. LOVERING:

Q. Do you have anything of that kind covering inbound shipments which are held at any point and then subsequently moved for unloading?

A. In-bound carloads?

Q. Yes.

A. That is the same as a car that the ticket may show to complete unloading or to finish unloading, it is placed at a cer-
1038 tain point and then moved. It is a respot, they reload the car and it is removed to another location.

Q. Does that same service, same term, apply if you have loaded a car brought in after the line haul has been completed——

A. Yes.

Q. And then it is placed in the plant and is not removed to the point of unloading until several days later, would that be included under respot?

A. Yes.

Mr. BURCHMORE. A second placement, that would be, would it not, too?

Mr. LOVERING. Why, yes.

Mr. BURCHMORE. Include a second placement?

Mr. LOVERING. Yes.

Mr. BURCHMORE. Is that $1.98?

The WITNESS. Yes.

By Mr. LOVERING:

Q. The same charge applies there as for the finished loading?

A. Yes.

Q. Do you get the information on that in the same manner as the other?

A. Yes, sir.

Q. And the same tariff authority?

A. Yes, sir.

1039 Q. Now, the weighing, what was the weighing charge, do you recall, last fall, in moving coal from storage to the dryer?

A. Thirty-five cents per car.

Q. Do you receive the information concerning those moves in the same manner?

A. Yes, sir.

Q. And what was the tariff authority?

A. H-13944.

Q. With reference to this spotting charge we have been hearing about, of $2.50 on the interstate cars, in what manner do you get the information concerning that?

A. On the in-bound interstate cars we make a daily check of our office copy of the freight bill, the original freight bill. Our in-bound cars are billed up from those copies. On the out-bound cars the charges are billed up from the office copy of the signed bill of lading.

Q. What is the tariff authority for that charge?

A. Sperry's tariff No: 79.

Q. Is any charge made for the so-called hot movement, movements to a connecting line with an order to place that car on a certain train?

A. No.

Com. PATTERSON. You mean an extra charge, don't you?

The WITNESS. The only charge we make is an assessment of the freight charges. There is no switching charge involved in that.

1040 By Com. PATTERSON:

Q. You get $2.50 for that?

A. If it is an interstate car.

Q. If it is an interstate car, the same as any other, don't you?

A. Yes.

By Mr. LOVERING:

Q. Do you ever have a coal spotting charge of $2.50 on state traffic, in-bound?

A. No, sir.

Q. In-bound or out-bound?

A. No, sir.

Q. Are in-bound shipments of state grain matched up with out-bound products to interstate points?

A. They are compared every day with the out-bound bill of lading, that is, the transit shipments out-bound, the bottom of the waybill, the foot of the waybill, rather, or bill of lading, indicates the in-bound reference to the tonnage which had been received, and it is very easily matched up that way.

Q. Well, do you—when the in-bound lading of state cars has been matched up with a shipment going out to a state destination in a through rate applicable from point of origin, do you ever go back and assess a spotting charge on this inbound car?

A. No, sir.

Q. Can you estimate the approximate number, approximate percentage, of out-bound loads that go out under transit arrangements?

A. I would say about 85 to 90 percent.

1041 Q. 85?

A. 85 to 90 percent; yes.

Q. Do you make any charge in case a car is held for billing?

A. A car which has been loaded and held—no; that is carried through on the demurrage.

Q. When the cars of grain in-bound are weighed, for instance, it has been testified, on the scales, at elevator C, or beans are weighed on the scales at——

Mr. BURCHMORE. There isn't any scale at elevator C, is there?

Mr. LOVERING. A hopper scale, I believe, at elevator C.

The WITNESS. Hopper.

By Mr. LOVERING:

Q. Are the weights obtained there the weights that are used by you in determining the amount of the freight bill?

A. If the car is unloaded at elevator B, we determine the amount of the freight bill from the weight obtained by running the car across the scale, yes; that is the only method we have of collecting freight charges.

Q. Does that same thing hold true with grain delivered at elevator C?

A. No, sir; it does not.

Q. What procedure is followed there?

A. They are unloaded direct from the car into the pit and weighed over the hopper scales. It is not necessary to
1042 weigh the car.

Q. Are those weights obtained in that manner used by you in determining the charge?

A. They are furnished to us under a regular grain certificate.

By Mr. BURCHMORE:

Q. Sworn weighmaster?

A. Sworn weighmaster.

By Mr. LOVERING:

Q. Can you give the number, please, of Staley loads handled in and out of Decatur for the Wabash during the calendar year 1935?

A. 1935? Yes, sir; in 1935 we received in-bound 2,627 cars; there was forwarded from Decatur 3,705 cars.

Q. In 1936?

A. In 1936 the in-bound loads were 4,488; the out-bound were 5,198.

Q. 1937?

A. In-bound 4,508; out-bound 6,104.

Q. 1938?

A. 1938, in-bound 4,852; out-bound 7,154.

Q. 1939?

A. In-bound 6,576; the out-bound 8,835.

Q. These years that you have mentioned are calendar years?

A. Yes, sir.

Q. Do you have any information as to the number of intraplant moves, during the year 1939?

A. No, I haven't, not with me; not the straight intraplant
1043 movements; I do not.

Q. Would you feel able to estimate approximately the number for the calendar year 1939?

A. No; I would not want to because during the grain season, for example, at the rush of grain or during certain periods of the year when grain is heavy, you don't have hardly any intraplant movement, because the grain they use at elevator B is removed

from the in-bound tracks direct to the elevator, so at that time of the year your intraplant grain movement is very light, but I would judge about four or five thousand cars a year.

Q. In intraplant movement?

A. Yes. It may be more or it may be less.

By Mr. BURCHMORE:

Q. That is just a guess?

A. That is just a guess; yes.

By Mr. LOVERING:

Q. Have you any idea as to the total number of moves made by the Wabash in 1939; all kinds of cars included?

A. No, sir.

Q. Empties and loads?

A. No, sir; I haven't.

Mr. LOVERING. I have nothing else, Mr. Commissioner.

Com. PATTERSON. Cross-examine.

Mr. BURCHMORE. Just a moment, just one—just two questions.

Cross-examination by Mr. BURCHMORE:

1044 Q. If I am not mistaken, Mr. McKinley, your charges for intraplant switching, your charges for movements to finish loading or to finish unloading, and the other charges that you have mentioned, with the exception of the $2.50 spotting charge, all these other charges that you assess at the Staley plant are the same charges that you assess for any similar movement made for any other shipper in Decatur?

A. No; we don't have intraplant switching at any other point on our lines in Decatur. It would be a higher charge if one industry, once concern, had two industries operated within a block of each other.

Q. From one industry to another?

A. The charge would be higher on a car that has received or would receive a line-haul move, but if it was completely loaded and then unloaded you would have another charge. That is what we call a cross-town switch.

Q. Put it this way: Your charges in Wabash tariff K–5000 are not applicable alone at Decatur, are they?

A. Certain items are listed under Decatur, Illinois, in the tariff.

Q. And there are corresponding items covering the corresponding service at other places on the Wabash?

A. At other points; yes.

Q. Now, are these charges——

By Com. PATTERSON:

Do you have cross-town movements here?

1045 A. Yes, sir; we do.

Q. Do you have those?
A. Yes, sir.
Q. But you have no other industry where you have intraplant movements in Decatur?
A. No.

By Mr. BURCHMORE:

Q. Now, do you collect the demurrage charges for the detention of cars beyond the free-time period?
A. Yes, sir; we do.
Q. Are your demurrage charges and your demurrage rules for the detention of cars at Decatur uniform and the same at all industries?
A. All industries.
Q. You make the same charge and apply the same rule at the Staley plant, on the Staley traffic, that you do to all other industries?
A. We do; yes, sir.
Q. In Decatur?
A. Yes, sir.
Q. And that is the uniform Railway National Code of Rules?
A. Code of rules; yes, sir.
Mr. BURCHMORE. That is all.
Com. PATTERSON. That is all.

By Mr. STRASSER:

Q. Mr. McKinley, as to tariff, the only difference would be
1046 that some might be on the average agreement and others on straight demurrage?
A. Yes; that is right; those that have the average agreement allowing them forty-eight hours and applying any debits against and credits. That is the only difference. The men on the straight plan do not have that privilege.
Q. In response to Mr. Le Forgee's question as to how you assessed the $2.50 terminal charge, I believe your answer took in only the cars that have road-haul movement over the Wabash?
A. That is right; on the connecting line cars.
Mr. STRASSER. Just a minute. Do I understand, Mr. Lovering, that your question was limited to those?
Com. PATTERSON. What question are you talking about, Mr. Strasser?
Mr. LOVERING. My question had to do with the handling of interstate cars in and out of the Staley plant. I don't think I drew any distinction between connecting lines at that point.
Mr. STRASSER. Well, then I don't believe Mr. McKinley's response was complete. I think he covered only cars that had road-haul movement over the Wabash.

The WITNESS. All right. On the connecting line cars it is customary here for any railroad that delivers us a car for placement to an industry or has us switch one from an industry to their line, to give us a switching ticket authorizing us to make those moves and they indicate on that ticket the car number and the initial and the contents, and so forth, who the shipper or receiver is, and they also show on the Staley cars, any interstate cars arriving, show the name of point, the point of origin, and if it is an out-bound car the final destination, including the state; the name of the state. Therefore, it is from that information that they give us, enables us to assess our collection bills for that spotting charge.

1047

By Mr. STRASSER:

Q. Now, some question was asked, as I understood it, as to how you determine which of these intraplant charges are to be assessed. It is true, is it not, that the yard clerk and the switchman know what commodity is loaded or unloaded at any particular location?

A. I assume the yard clerk does; yes. The information is on the ticket when we get it; the only thing we have to insert is the charge.

Q. And the information as to the commodity appears on the instructions on this form that the Staley Company gives our man?

A. Yes, sir.

Q. So that if they have an order to move a car of coal from a stock pile to the boiler room, the natural inference would be that the coal is to be unloaded at the boiler room?

A. Yes, sir.

Q. And you would know how to set that car?

A. Yes, sir.

Q. The same way if a car is partially loaded with one of the products manufactured by Staley Company and the order is to move it to some other location, where some commodity that is shipped is being loaded, to finish loading; then you would know the car was being loaded for road-haul movement?

1048

A. That is right.

Mr. STRASSER. That is all.

By Mr. BURCHMORE:

Q. Did you state, Mr. McKinley, what type of demurrage agreement the Staley Company had?

A. No; I don't believe I did.

Q. What kind of an agreement is it?

A. They have the regular average agreement with us.

Q. Average agreement?

A. Yes, sir.

Q. And are there any other plants here that have the same type of agreement?

A. Practically every industry in Decatur; yes.

Mr. BURCHMORE. That is all.

(Witness excused.)

C. A. JOHNSTON resumed the stand and testified further as follows:

Direct examination by Mr. LOVERING:

Q. Mr. Johnston, as superintendent of the Wabash here in Decatur, are you in a position to state how many loaded cars to Staley Company, after having been set out to be held for billing on a hold track, were ordered set back to some one or more unloading
1049 points within the plant during the month of September 1939?

A. Yes; I have that information. There were thirty-six cars on which there was a charge of $1.98, and sixty-five cars upon which there was a charge of $3.47.

Q. Does your information indicate the purpose of the movement back?

A. They were all for the purpose of—the $1.98 cars, the thirty-six $1.98 cars were for the purpose of finish loading, and the $3.47 cars were for the purpose of transferring the load.

Q. Mr. Johnston, are you in a position to give us information as to the number of crews who worked at the Staley plant in September 1939, and the division of their work as between Wabash switching and Staley switching?

A. In September 1939, we worked a total of 116 crews and those 116 crews worked 950 hours and 47 minutes. Of that total hours and minutes, 800 hours and 55 minutes represented the Staley switching and 154 hours and 52 minutes Wabash switching.

By Mr. LE FORGEE:

Q. For the purpose of an explanation, does that item include the switching and work upon both interstate and state cars?

A. Yes; that includes total work done, which would be on both kinds of cars.

By Mr. LOVERING:

Q. Can you state, Mr. Johnston, what charges, if any, were charged by the Wabash Railway during the calendar year 1939 from the Staley Company, under the provision of the
1050 consolidated freight classification No. 13 providing for a charge on the content of a returned empty tank car except where that content is not in excess of two percent in the original

lading, or no commercial consideration is given to the substance remaining in the car?

A. There were two such cars.

Q. Two?

A. Yes.

Q. That is the calendar year 1939?

A. That is right; the calendar year.

Q. Which one was that?

A. The calendar year.

Q. Calendar year of 1939. Are you in a position to state what charges were collected by the Wabash Railway from the Staley Company for the month of September 1939, for weighing, switching, and spotting, and subdivide it as to the various charges made, 35 cents for weighing, $1.98 for switching or spotting, certain other switching and spotting at $2.50 and $3.47?

A. Weighing twenty-one cars at 35 cents, $7.35; to complete loading or unloading 111 cars at $1.98, $219.78; spotting interstate cars, 1745 at $2.50, $4,362.50; intraplant switching, 325 cars at $3.47, $1,127.75; a total of $5,717.38.

By Com. PATTERSON:

Q. That is for the month of September?

A. Yes, sir.

Q. Does that weighing charge for weighing twenty-one
1051 cars include all cars that were weighed or just the interstate cars?

A. That includes all cars that were weighed for which charges were made.

Q. Well, do you weigh cars for which charges are not made?

A. Only for determining revenue billing on cars that move out over our line.

Q. What I was interested in is, it was testified by somebody that certain cars were weighed two or three times before they finally got rid of them. Does that include each time a car was weighed?

A. This includes each time a car was weighed, Mr. Commissioner, when, according to the tariff, we should charge.

Q. Well, shouldn't you charge each time you do weigh it with the exception that you have just previously made? For instance, if you weigh a car before the car is steamed out, those are the cars I had in mind. Then you weigh it again after it is steamed out, then you weigh it again after the load is placed in the car. Does that include that type of cars?

A. Well, I can explain that by—in September 1939 I think I know what you have reference to, there were some cars weighed for the purpose of determining the residue. That practice has

now been changed so that the industry gauges those cars by means of a measuring stick to determine the residue, and any weighing that was done in September 1939 for the purpose of determining the residue are not included in here and were not charged
1052 for, and the practice since that time has been changed in favor of gauging the cars to eliminate the weighing and the switching back and forth to do it.

By Mr. LOVERING:

Q. Have you any information, Mr. Johnston, or can you give us an approximate idea as to the cost to the Wabash of handling a loaded car to the Staley plant on which it had the line haul during the calendar year 1939?

Mr. BURCHMORE. May that question be read?

(Question read.)

The WITNESS. Do I understand you to mean by that our cost of handling those cars as far as switching——

By Mr. LOVERING:

Q. The average cost to the Wabash of getting a loaded car in and out of the plant?

A. No, I have no such figure.

Q. Do you have any covering the movement in—do you have it to show either the movement in or the movement out?

A. No, I have no such figures.

Mr. LOVERING. Nothing else.

Com. PATTERSON. Cross-examine.

Mr. BURCHMORE. No questions.

Mr. STRASSER. Now, I have no cross-examination, and therefore, if anyone else wants to have any cross-examination I would like to have them state that, but I have a few questions I want to ask Mr. Johnston which are in the nature of explanation or rebuttal, you might say, of certain witnesses that Mr.
1053 Lovering introduced.

Mr. BURCHMORE. May we just inquire if Mr. Lovering has rested?

Com. PATTERSON. Yes; are you through?

Mr. LOVERING. Yes.

Com. PATTERSON. Go ahead.

By Mr. STRASSER:

Q. Mr. Johnston, you examined Exhibit 31?

A. Yes.

Q. Now, I wish you would explain the movement which is typical of this exhibit and has to do with the movement of cars for unloading or loading grain doors?

A. Well, the exhibit, as it shows, refers to the movement of cars from Burwell No. 2 to elevator A and then to track 11–B and then to the Wabash classification yard. The cars are classified for elevator A in No. 2 track in Burwell for our own convenience because we don't have room in our yard to do that kind of work.

Those cars are taken as convenient to our engine doing the work in the Staley yard to elevator A for unloading, and after the cars are unloaded it is necessary to make disposition of the grain doors. The grain doors are handled for our account under contract by the Central Weighing and Inspection Bureau, and in order to carry on the work in that plant in an orderly manner we have designated a point for the storage of grain doors where
1054 the grain door man can cooper the doors, stack them, count them, and keep track of them and have them available to place in cars for out-bound loading. That space is over on track 11–B.

So, to avoid confusion and to handle the thing in an orderly manner, we put all the cars that come out of elevator A on track 11–B for the removal and stacking up of the grain doors.

By Com. PATTERSON:

Q. Is that track 11–B in the Staley Company's yard,

A. Yes, sir.

Q. And you just mix your work in with their work to that extent?

A. That is right.

Q. The same as you mix in your interstate and intrastate switching? That is for the purpose of operating the railroad?

A. Well, we do that because that is a convenient place to stack the doors.

Mr. BURCHMORE. I don't understand your question, Mr. Commissioner, about mixing their work in with ours. We haven't any work about grain doors.

Com. PATTERSON. No, you furnish the track is all.

Mr. BURCHMORE. We let the Central Weighing & Inspection Bureau have the free use of the ground and track, if I am not mistaken.

Com. PATTERSON. Well, I guess you are not mistaken.

The WITNESS. That is right.

By Mr. BURCHMORE:

1055 Q. Well, they do a lot of carpentry work on the doors, don't they?

A. Yes; they repair the grain doors.

Com. PATTERSON. But it is on your premises.

Mr. BURCHMORE. Yes. Oh, yes.

The WITNESS. That is right. That is the usual practice at elevators in a plant of this kind.

By Mr. STRASSER:

Q. Mr. Johnston, the Staley Company has no particular interest as to where the Wabash takes those grain doors out of the cars?

A. Well, it is usual at elevators to have a place to carry on grain door agency work.

Q. Is it necessary to remove the grain doors from cars at all parts where you make delivery of grain at elevators?

A. That is right, it is universally done.

Q. And that is arranged in such a way as to be most convenient and economical for the carrier?

A. If those grain doors were unloaded at various points, it would cost something to get them back into a concentrated place, so we handle it as we do for economy.

After those grain doors are removed, we take the cars out to our classification yard for delivery to connections or for our own use, as we go out of the plant with other cars.

Now, the first item in connection with car I. C. 159138, whenever grain doors accumulate for one road so that they have more than a working supply on hand, they load a car of
1056 grain doors to that railroad and ship them back. They are their property. That happens occasionally. Otherwise the cars are taken out empty, as I indicated before.

By Com. PATTERSON:

Q. Well, in the meantime these grain doors are stored on the Staley property?

A. That is right, as is usually done at elevators.

Q. Well, in any event, as this elevator?

Mr. LE FORGEE. I did not understand the Commissioner's question.

Com. PATTERSON. I say, in the meantime these grain doors are stored on your track 11-B.

Mr. LE FORGEE. Yes.

By Mr. STRASSER:

Q. Is that all you wish to say about Exhibit 31?

A. Yes, sir.

Q. Now, take Exhibit 32. That is the one which covers the movement from Burwell track No. 4 to elevator C and then to the Wabash classification yard for delivery to some other railroad?

A. That is a very simple move. As explained by other witnesses, these cars of grain are placed on tracks 2, 3, and 4 for elevators A, B, and C, and the cars on track No. 4 are placed in

from the east and by the outside engine and the engine on the inside reaches into the west end of track No. 4 and shoves the cars into the elevator tracks as required.

Q. Now, Exhibit 33, involving the movement of coal, will
1057 you explain that movement?

A. Coal and other miscellaneous manufactured articles for the Staley plant are put in No. 1 track, and whenever the inside engine is in that vicinity and convenient for it to do so, it takes those cars, including coal, into the plant. If there are a few cars of coal and the coal docks should be empty, the cars are placed direct on the coal dock tracks. If the coal dock has been set up, the tracks are full of cars, they are still taken into the plant as the engine is making the move anyway, and put on a convenient track for holding until it is necessary to get more cars of coal on the coal dock.

By Com. PATTERSON:

Q. Right at that point, do you make a charge for putting these cars on the coal dock after they have made the first spot?

A. After they are put on 6–A, you mean?

Q. Yes.

A. No, sir.

Q. You do that at your convenience?

A. We do that because rather than hold the cars on No. 1 track and make a long trip, we take them with us and hold them on any track adjacent to the coal dock, which is usually 6–A.

By Mr. BURCHMORE:

Q. Handle them that way for what purpose?

A. To save our own time, of the engine going back and forth, for our own convenience. Those cars could be just as easily taken one by one or twelve by twelve from No. 1 back to the
1058 coal dock and then make another trip, but the switchmen don't do it that way.

By Com. PATTERSON:

Q. No; you make the second spot——

A. To save our own time.

Q. That is right.

By Mr. STRASSER:

Q. Exhibit 34, which is the one involving the movement of empty or loaded tank cars, what do you have to say about that?

A. Empty tank cars come in at the east end of Burwell, the same as miscellaneous loads, and are—you might say that first the empty tank cars are two kinds, the glucose tanks, as I call them, and the oil tank. The glucose tanks have a residue in them, usually have a residue in them, and the oil tanks do not.

The glucose tanks are taken in and at sometime before they are loaded the tanks are weighed.

It formerly was the practice during the period that this check covered to weigh those glucose tanks upon receipt and then place them on track 4–B, which is a convenient storage track, until the Staley Company wished to use them. Track 4–B is used to hold empty tanks until needed.

The glucose cars that may need the measuring of the residue and subsequent cleaning out are then placed on track 2–B or the other track which is adjacent to it to have the residue measured and the cars drained and cleaned out.

By Com. PATTERSON:

1059 Q. Where does track 2–B—where is that shown on this statement?

A. On the second sheet you will see cars moving to 2–B. 2–B is where the clean-out pits are.

Q. Yes, I see.

A. Now, the first weighing, as I explained a minute ago, has been eliminated since this check was made, in favor of gauging the residue. The weighing that is done after the tank is cleaned out is charged for at the usual rate on cars moving out via other connecting lines. The connecting line is charged for the weighing and in our case the weighing is done in order to determine the weight, the contents, for revenue purposes and not charge for it.

By Mr. LE FORGEE:

Q. Revenue purposes of the railroad?

A. Yes, sir. On the second sheet——

By Com. PATTERSON:

Q. Well, are these all Staley's cars that you are considering here?

A. They either belonged to Staley or they are leased cars.

Q. Do you happen to know whether the light weights of these cars are stenciled on the cars or not?

A. From my personal observation some of them are and some of them are not.

Mr. BURCHMORE: Mr. Commissioner, before you get away from this one he is looking at, we can shorten it if we cover this right here.

Com. PATTERSON. Yes.

1060 By Mr. BURCHMORE:

Q. I notice that first car, AESX No. 91, according to this went from the scale to 2–B for cleaning twice on the same day. Now, it seems to us that that is a little improbable.

A. I noticed that but not having these figures before we came into this room, I could not check up, but my guess would be there was some error made there.

Mr. BURCHMORE. Now, we will at the proper time, probably in the argument or brief or sometime, state our position with regard to this weighing and cleaning of tank cars, but we question whether any car went to a scale and then over to be cleaned and then over the scale and then over to be cleaned again on the same day. Certainly we don't want that kind of service. There must have been something very strange about it.

Com. PATTERSON. Well, doesn't the following, this car 82—don't you have the same situation there?

Mr. BURCHMORE. Well, maybe. Yes, it should not have happened and we don't quite understand.

Com. PATTERSON. Maybe you ought to have that service changed on all of them.

Mr. BURCHMORE. Wait a minute. It has been changed, Mr. Commissioner.

Com. PATTERSON. I realize that.

Mr. BURCHMORE. The practice has been changed.

Com. PATTERSON. Of course, we can't exactly keep up
1061 with all these changes.

Mr. BURCHMORE. Oh, no.

Com. PATTERSON. But the service at that time should have been different if this is true.

Mr. BURCHMORE. Oh, yes; we agree to that, I think.

Com. PATTERSON. Where did this record come from?

Exam. WEAVER. Exhibit 34.

Mr. LOVERING. As I understand it, those exhibits there were made up from working sheets prepared by witness Strong, Service Agent Strong, Bureau of Service, from the records of the Wabash Railway Company at the scale house.

Com. PATTERSON. Well, according to this sheet I have before me, on this car 91 it shows that Conductor Rex cleaned the car; then Conductor Parker came along and did the same thing.

The WITNESS. That is obviously a duplication there, there being no reason for that.

Mr. LOERING. I can't explain, Mr. Commissioner, whether that was an error out there which resulted in the car being shown as moving to the cleaning track twice or not.

Mr. BURCHMORE. Mr. Commissioner, may I say two things about it? From our point of view it isn't important, we would not defend such a thing as a practice, but as I understand Mr. Johnston's testimony I rather gather that he thinks back there in September the practice wasn't the best and he made a sugges-

1062 tion to change it and it has been changed, with respect to this very matter, is that right?

The WITNESS. That is true.

Com. PATTERSON. Yes. Well, in order to clear up this point as to whether or not this was an error, if a representative of the Commission observed that movement we will stand on that fact; if it was taken from some record and he did not see it, why, we will be governed by the record, whatever it is.

Mr. LE FORGEE. I direct the Commissioner's attention also to the fact that that occurs in the second paragraph, second item, on the first page and again on the third page under No. 20, as indicated from that sheet.

Com. PATTERSON. That is right.

Mr. LE FORGEE. Two cleaning operations there one right after the other.

The WITNESS. Mr. Commissioner, it is an apparent error of some kind in the third sheet where you will notice the cars are moved from the scale to track 4–B for cleaning. Cars are not cleaned on track 4–B. That is the storage track. That is, that is an error of some kind obviously.

Mr. LOVERING. That may be the condition at the present time, Mr. Commissioner, but just what the condition was back in September——

By Com. PATTERSON:

Q. Well, back in September were the cars being cleaned on track 4–B?

1063 A. No, sir.

Mr. LOVERING. My understanding is that cars were cleaned on two tracks back in September. I cannot state that as a fact.

Com. PATTERSON. They were cleaned here on tracks 4–B and 2–B, on this report.

The WITNESS. Yes, there are two cleaning tracks but one of them is not 4–B.

Mr. LOVERING. I will state one thing, I don't think it is typical by any means of the practice to have two cleaning tracks on the same cut.

Mr. STRASSER. Now, with respect to that first item we have been discussing, the first one on sheet two, it will be noted there that the conductor, the first conductor, that handled that car for a cleaning was Mr. Rex. Then there was another conductor, Parker. It is suggested that possibly one of those men started to take this car down there and then went off duty and Conductor Parker came on and both of their——

Com. PATTERSON. Well, that is a speculation. Are those records available?

Mr. LOVERING. Those records are available; yes, sir.

Com. PATTERSON. Let's get them if it is important enough. If you accept it as it is, we will let it go.

Mr. LE FORGEE. It will be difficult to get them here at the present time, although we are perfectly willing to check on
1064 them ourselves.

Mr. LOVERING. In view of the question which has been raised in connection with Exhibit 34, page 2, in connection with the second cleaning operation shown to have taken place as to AESX 91 and AESX 92, and on page 3 AESX 20, I would like to ask that those three cars not be given any consideration in connection with the consideration given to the exhibit as a whole.

Com. PATTERSON. And that the cars be stricken from the exhibit, is that it?

Mr. LE FORGEE. That is the idea.

Com. PATTERSON. If there is no objection, that will be done.

By Mr. STRASSER:

Q. Is there anything more about Exhibit 34, Mr. Johnston, that you want to discuss?

A. No.

Q. Now, are you familiar with this practice or operation in connection with cars that have been described as no-bill cars?

A. Yes.

Q. Just state what is done about that and why?

A. A no-bill car, as far as the switchman is concerned, is any car that is pulled out of the plant. He receives instructions from time to time by means of these switch lists.

Q. Pardon me, you mean any loaded car that is going out of the plant?

1065 A. Loaded car; yes. He receives his instructions from time to time by means of the switch list, to go to certain points and pull loads and spot empties, and so forth. Those loads are continually flowing out of the plant at the west gate into our old east-bound storage yard.

In the meantime we have been given information, through our agent, as to the destination road, and, as we take them out, we switch them in the various tracks, making up tracks of I. C. cars and Pennsylvania cars, and so forth.

By Com. PATTERSON:

Q. Just at this point, if they are taken out of there on a switch list and no bill, how can you classify them on the way out?

A. Previous to pulling the cars we receive, through the connecting lines and our agent, telephone information as to the destination line of the car.

Q. You mean that that information always or ordinarily shows up while the fellow is en route from the plant to your yard?

A. It shows up before that. He starts getting that information early in the morning. Then as the cars are pulled out he matches them up. Then in the afternoon we receive the billing, which catches up with the cars, with the bulk of the cars. Then that actually leaves out in the old east-bound storage yard, among the cars we have taken out there, some actual no-bill cars. Those cars may be billed that night or the next day, and, if they
1066 are billed within the free time, no charges are assessed. If they are not, then charges are assessed.

Q. They may not be billed for forty days, according to the testimony this morning?

A. That is the testimony of one man; yes, sir. There is an exception, though, as to tank cars which are probably owned by Staley or leased. Those cars are not assessed car service charges, because privately owned cars, when held on the private tracks, are not subject to such assessment of charges. But for our own convenience, among all these cars that we are taking out, we take them out and hold them out there.

Q. You store them in your yard just the same as you do your no-bills?

A. That is right. If we didn't we would have to stop this cut of thirty or forty cars, switch them out and put them on the track inside, which would make more work for us.

Q. Or you could bring them back or——

A. Well, which would be more work.

By Mr. BURCHMORE:

Q. You can do that tomorrow. It is in your control.

A. We don't want to.

Com. PATTERSON. I say, they could bring them back or they could keep them or store them in their own yard?

Mr. BURCHMORE. That is right.

By Mr. STRASSER:

Q. Mr. Johnston, these out-bound loaded cars continue to
1067 accrue demurrage debits until they are released by proper billing instructions?

A. That is correct.

Q. Now, I think you have covered the number of crews working. What have you to say about that?

A. Nothing additional.

Q. What is your opinion, Mr. Johnston, based on your experience now, on this sort of question: Suppose that you did not have the Staley plant here but that you had the same number of cars coming here to Decatur to be handled for other industries,

other team tracks, warehouses, within the Decatur switching limits, what would be the effect on the number of men and the facilities required to handle the business as compared with what is required under the present conditions?

Mr. Le Forgee. Just a minute, if you please, do I understand that is based upon the volume of freight to be distributed among other patrons as equal in amount to that which is distributed or taken to the Staley plant?

Mr. Strasser. That is what I said.

Mr. Le Forgee. Pardon me.

Mr. Strasser. If I did not, I intended to.

Mr. Le Forgee. All right.

Mr. Strasser. An equal number of cars.

The Witness. I think it would take more switch engines and therefore cost more to distribute those cars among widely separated plants than to handle them at the Staley plant.

1068 By Com. Patterson:

Q. Well, you are referring to a large number of industries that handle the same number of cars that the Staley plant handles, but had separate leads off on one railroad?

A. Yes; distributed throughout the town as they are now.

Q. Yes, but you would not have a situation like Staley has here with as many cars represented by many different industries?

A. No, as I understood his question, what was my opinion of the work that would be required to switch 100 Staley cars into the plant or 100 cars distributed over various other industries.

Mr. Strasser. That is the same question.

The Witness. My answer was that it would take more switching power to distribute the same number of cars over a good many industries.

By Mr. Strasser:

Q. It would take substantially more to handle an equal volume?

A. That is right.

By Com. Patterson:

Q. But if you had a group of industries that took the same number of cars that Staley takes, you would not take them all through one track, you would have separate leads off of your railroad, would you not?

A. That is right.

Mr. Burchmore. Mr. Commissioner, then put it this way: Suppose this same identical lay-out of tracks that we have got here,

1069 that is operated with Staley, was in fact, operated by the Farmers Elevator Company, the elevator, and the syrup plant by the Staley Syrup Company, and the coal tracks

by the Decatur Coal Company, it would not be any less work or would it be less work with the different owners of four or five different industries——

Com. PATTERSON. Well, that is so entirely speculative it is not only improbable, I think it is probably impossible. Is there a place in the United States where that exists?

Mr. BURCHMORE. Why couldn't it be?

Com. PATTERSON. It could be, but does it? It don't know of a place in the United States where you go into so many industries through one lead track.

Mr. BURCHMORE. Concentrated traffic. Well, I don't either.

Com. PATTERSON. No.

Mr. BURCHMORE. But that makes more expense or less expense, that is what I am asking Mr. Johnston.

Com. PATTERSON. You are setting up a condition that just does not exist.

Mr. STRASSER. Well, your Honor, now, the question I asked did not contemplate having these industries all bunched where you would have to go into one lead track.

Com. PATTERSON. But you have it bunched here.

Mr. BURCHMORE. And does the bunched cost less or cost more?

Mr. STRASSER. But in spite of that fact I am asking Mr.
1070 Johnston if it isn't true that having an equal amount of business scattered out among all the other industries, whether it would require more service to handle them than it does to handle the same number of cars for the Staley Company under the present condition. That was the question.

The WITNESS. My answer was that I thought it would cost more, take more engines, and so forth.

By Com. PATTERSON:

Q. Well, then I will ask you a question. Do you know of any place where such a condition does exist?

A. Yes, the condition that he refers to and as I understand it exists right here.

Q. Yes, but——

A. As far as the location of industries is concerned.

Q. Yes; but do you know of a place in the United States where you have that many separate industries going through a single lead track?

A. I don't know of any.

Mr. STRASSER. No; I did not say through the same lead track.

Mr. LE FORGEE. As I understand, the question did not assume that they went to these factories through a single lead track, but the question involves here taking the same amount of freight as now is brought into and taken from the Staley plant, and in

lieu of the distribution there, if that same quantity was taken out or was distributed among the present known manufacturers and established business places in the City of Decatur which
1071 they now serve whether or not that would entail an additional or a less cost for the delivery and receipt of that product than they now have for the Staley Company. I understood him to say that it would.

Com. PATTERSON. That it would cost more?

Mr. LE FORGEE. Yes; for the other industries.

Mr. BURCHMORE. To the other industries.

Mr. LE FORGEE. It would cost more to deliver to the other industries than it cost the railroad now to deliver to Staley.

Mr. STRASSER. And to give it the service that we are giving it out there.

Com. PATTERSON. Well, that is too speculative. Off the record.

(Discussion outside the record.)

Go ahead, ask your question.

Mr. STRASSER. Well, I think the witness has answered my question but I will ask him another one.

By Mr. STRASSER:

Q. Let's forget for a moment now about this vast business that is done by the Staley Company——

A. I can't forget it.

Q. Well, I know, but I am asking you to do that. Suppose tomorrow you had 1,000 cars for the Staley Company and 1,000 cars for all the other industries within the Decatur switching limit. I ask you which would require the most service, serving those 1,000 cars to the Staley Company under the present plan of oper-
1072 ation, or serving the other plants, with respect to these 1,000 cars going to them under the conditions existing at Decatur today?

A. It would require more service to put 1,000 cars at our present industries.

By Com. PATTERSON:

Q. I will ask you——

Mr. STRASSER. Just a moment, please. I would like to take this one step further.

Com. PATTERSON. Go ahead.

By Mr. STRASSER:

Q. Suppose these 2,000 cars were all interstate cars. Under your present tariff the Staley Company would have to pay how much for having those cars placed in there?

A. $2.50 per car.

Q. $2.50. And the other 1,000 would be delivered without any cost whatever to the consignees?

A. The total would be $2,500.00.

Q. $2,500.00, that is correct, and the other industries would get their service without any charge?

A. That is correct.

Com. PATTERSON. Are you through?

Mr. STRASSER. I just had one more general question to ask Mr. Johnston. I don't know, maybe I asked this same question in a different form when Mr. Johnston was on the stand before, but all of these things now that have been referred to here in the exhibits prepared by Mr. Lovering——

1073 Com. PATTERSON. Before you get to that, with respect to these other questions they are purely hypothetical questions, isn't that true?

The WITNESS. Well, as to the number of cars, we would like to have that many cars for our other industries, but we haven't.

Com. PATTERSON. Nevertheless, they are hypothetical questions.

Mr. LE FORGEE. We will agree to that.

Com. PATTERSON. And the second question is, did you ever do any switching?

The WITNESS. Was I ever a switchman?

Com. PATTERSON. That is right.

The WITNESS. No, sir.

By Mr. STRASSER:

Q. You have supervised a lot of it, though, haven't you?

A. Yes, sir.

Q. Studied it?

A. Yes, sir.

Q. All of these things that have been referred to here in the exhibits presented by Mr. Lovering's witnesses in their direct examination, are those done by the Wabash Railway Company for its convenience in handling the business for the Staley Company as expeditiously and as economically and practically as any scheme that you have been able to devise?

1074 A. It was necessary to work out a plan to switch this plant economically considering the large volume of business, and we think that such a plan has been worked out, although we study it from time to time and make such changes as we can to improve the service or reduce the cost as we go along.

Q. Now, some reference was made in one of these exhibits to some hot cars. Now, I think we all agree as to what that notation "hot" means. What can you say about that? Is that anything unusual or peculiar to handling the Staley's Business or do you

have occasions when that same kind of service is required for any shipper who is progressive and tries to give the Wabash some business?

A. Everybody around the yard understands what hot cars are, but in getting into it I found that there was two types of hot cars, cars that we get out for the Pennsylvania trains and which we know, the switchmen know, usually go to Terre Haute, for instance, or via the Pennsylvania south, due to the early departure of their train they consider those hot cars and hurry them up down to the connection.

There are other hot cars that the Staley Company will tell us about, that they are interested in moving expeditiously, and we are told about them just as we are told by other industries that they are hot and they want them to move. That is the explanation of hot cars.

By Com. PATTERSON:

1075 Q. Do you have that at intermediate stations where you have no switch engines employed?

A. We do at some industries. One that I have in mind that our agent will tell our chief dispatcher that the American Rock Wall Corporation at Wabash, Indiana, has a hot car and what can we do? If we have a train in that vicinity that we want to stop and can stop, we will handle it; if we haven't, we will tell them so and that ends it.

Q. Do you send an engine out to get this car?

A. No, sir.

Q. You don't send an engine out?

A. No, sir; if we have a train that would not ordinarily stop there and we find it convenient to stop it, why, we would do so. Some of those hot cars, by the way, are listed on the switch lists as hot in the morning and they cool off before evening. In other words, they may get them out in the ordinary run of business and they may not.

Q. He doesn't let them wait until the next day, does he?

A. No, sir.

By Mr. STRASSER:

Q. It might also be, might it not, Mr. Johnston, that hot cars shown on a switch list would not receive any special service but would be moved with the regular drag of cars that would go to the interchange of some other railroad for a particular train?

A. I would not say that was true. As I said before, there are some hot cars that we make a hot move with. They are in
1076 the minority.

Q. I just want to know whether that is universally so or whether that notation is put on there so as to insure their getting out on the first train?

A. Well, as I just explained, some of them are and some of them are not, but hot cars are something that you have to contend with every place.

By Com. PATTERSON:

Q. Well, when they are marked "hot" they are insured preferential treatment from wherever they come from?

A. It may result in their receiving preferential treatment and it may not, but hot is hot, that is all.

Mr. BURCHMORE. Well, a suspension case is also supposed to be given preferred attention by the Commission, but here is one they have had seven or eight months now. It is a hot case.

The WITNESS. It has cooled off.

Mr. BURCHMORE. And we think you think it is hot.

Com. PATTERSON. Yes, we do.

Mr. BURCHMORE. Will we get it decided before the suspension period expires.

Com. PATTERSON. Well, I wish I could advise you but I hope, in case it isn't decided, you will agree to an extension.

Mr. BURCHMORE. Well, I hope you will still remember it is hot.

Mr. STRASSER. I think I have just one more question.

By Mr. STRASSER:

1077 Q. Have you made such explanation of the practice of switch crews reporting at the Staley Yard instead of at some other point that you care to make?

A. Well, we have various places that engine crews report, because it is stipulated in our agreement with them that they will have a definite place for going on and going off duty, and that place that the yardmaster has designated for the crews that do Staley work is at the Staley plant. The hostlers deliver the engines to and from the roundhouse there and the crews change there.

By Com. PATTERSON:

Q. The hostlers bring the engine that work in the Staley plant to the Staley plant for delivery to the crew?

A. Well, not exclusively Staley. The hostlers will deliver a string of engines, some to crews working in and around Staley's and some to other points around the yard.

Q. But one of those engines is delivered to a crew in the Staley yard?

A. That is right.

By Mr. STRASSER:

Q. Well, the hostler brings the engine to the crews at other points, too?

A. That is just what I said; yes. The point to it all is that the crews have to change at a definite point upon schedule.

Q. Anything else that you want to add for the enlightenment of the Commission?

A. I don't think of anything.

1078 Mr. STRASSER. That is all.

Mr. LOVERING. I have two questions, Mr. Commissioner.

Com. PATTERSON. All right.

Cross-examination by Mr. LOVERING:

Q. Mr. Johnston, in connection with that change made in the way of empty tank cars, can you tell us when that was made effective, approximately?

A. March 30, 1940.

Q. Can you tell us why that was done? I believe you explained it but I——

A. In walking around out there and observing the movement, it looked like an unnecessary move.

Q. Can you give us the date when the change was made in connection with these no bills, about getting advance information out so that the billing could be expedited—so that the movement could be expedited? I believe you stated that you now have a practice in effect whereby advance information is given or received by you so that you can start moving the cars out and get them on the way?

A. I think I told the Commissioner that off the record. I don't remember.

Mr. BURCHMORE. I think Mr. Burwell testified that that was made and it was made about the first of the year, and I looked it up and I think that the date of his note making that effective with his department was December 29, 1939.

1079 Mr. LOVERING. It was in connection with out-bounds.

Mr. BURCHMORE. That is what I am talking about.

Mr. LOVERING. I was thinking this was a change made somewhere around the same time as that one he just spoke of, cleaning tank cars.

Mr. LE FORGEE. No.

Mr. LOVERING. I don't know.

(Witness excused.)

Com. PATTERSON. Have you any witnesses?

Mr. LE FORGEE. No; we don't.

Mr. BURCHMORE. We had several matters we intended to cover by rebuttal but except as to minor details they have been covered by what has occurred in the last hour so that we have no rebuttal that we desire to offer.

Mr. SMITH. I would like to ask Mr. Burwell another question.

T. C. BURWELL resumed the stand and testified further as follows:

Direct examination by Mr. SMITH:

Q. Mr. Burwell, do you know how much money, grand total, that you paid the railroads last year in freight charges?

A. Yes; I know.

Q. What does it amount to?

A. We paid to the railroad about $4,599,000.00. There
1080 were, however, some cars in there, such as oil, on which we did not pay the charges.

Q. That is the amount of your freight bill; the line haul charges?

A. That is the amount of money we paid, yes.

By Mr. BURCHMORE:

Q. And in addition to that there was some sums paid by consignee on shipments?

A. That is right.

(Witness excused.)

Com. PATTERSON. Now, if there isn't anything more, do you wish to file briefs?

Mr. BURCHMORE. I suppose they would be helpful. I want to make this statement so far as we are concerned.

Mr. DYCHE. Pardon me, I wonder if before we get to the concluding statements I might mention that so far as Exhibit 21 is concerned, which was identified by the witness Frushour, intended to be put in by H. L. Frushour, copies were made and I believe now have been distributed to all the attorneys here. If there is an attorney who did not receive a copy, I have the copies and I believe the Commission have the original exhibit. It wasn't withdrawn.

Mr. STRASSER. On that subject of exhibits, I don't believe that any of the exhibits were formally offered in evidence. It is understood, is it, that all of the exhibits except those which were rejected have been accepted and are made part of the record.

1081 Com. PATTERSON. I think they were all offered and received in evidence.

Mr. STRASSER. Well, I just want to be sure about that. I did not formally offer mine but if that may be necessary I want to offer those now.

Mr. LE FORGEE. I have no objection to it and the thought occurred to me that if, in behalf of the Staley Company, they were not formally offered in evidence we would like the privilege now of offering those exhibits which were identified by the witness in behalf of the Staley Company, and ask that they be received in evidence in the case.

Com. PATTERSON. They will be. I think they have been.

Mr. LE FORGEE. I think so, too.

(Exhibit 17, witness Miles; Exhibits 18, 19, and 20, witness Powell; Exhibits 22, 23, and 24, witness Richardson; Exhibit 25, witness Burwell received in evidence.)

Mr. DYCHE. I would like to make one other statement. Mr. Frushour gave the traffic figures for the Pennsylvania, those cars inbound and out-bound, for 1937, 1938, and 1939. I though he overstated the 1939 figures and I checked with the freight traffic department in Chicago and I have what I believe are the correct 1939 figures, if you would like it for the record. It is 2937 cars rather than 1303 cars as stated by Mr. Frushour. Those are from the office of our freight traffic manager in Chicago.

1082 Mr. BURCHMORE. Mr. Commissioner, I suppose the parties would like to file briefs, but I would like to make this statement on behalf of the A. E. Staley Manufacturing Company. I do regard this case as an emergency case and we call your attention to the fact that the suspension case is made an emergency case by statute. Now, we have been disappointed that it was so long before this hearing could be held. We would like to file a brief, we would like to file it just as quickly as may be possible, and to overexert ourselves as counsel in the interest of having no avoidable delay, and I want to add that insofar as this suspension order is concerned my examination of the Commission records indicates, and I have been so informed as to its being the fact, that no request for suspension and no protest against these supplements was received by the Commission from any carrier or from any shipper and we know of no one who has indicated any dissatisfaction or objection to the cancelling supplements becoming effective.

Therefore, it seems to me it would be quite appropriate to move the Commission to vacate, rather than extend any suspension, but I do ask you to fix a short time, a reasonable but a short time, for the briefs, in order that any delay in disposing of the case may be avoided.

Com. PATTERSON. How much time do you want? We will make it as short as you want to. We can read them as quick as we can get them.

1083 Mr. BURCHMORE. May we have a little conference here?

Com. PATTERSON. Yes.

(Discussion outside the record.)

Mr. BURCHMORE. I will say for the record that Exhibit 35 will be furnished within ten days. It will be positively furnished within ten days.

In a discussion with counsel, in view of the difficulties of the case on the one hand and yet the importance of a prompt decision on the other, we have all agreed to ask that you fix a date in accordance with the usual rule, which we believe to be thirty days, for briefs for all parties.

Com. PATTERSON. All right, the brief date will expire on May 24th. That is a little short of thirty days, but we don't want it to come on Sunday.

Mr. BURCHMORE. Make it Monday.

Com. PATTERSON. All right, May 27th, Monday, is the brief date. Now, with respect to a proposed report, what is your thought in that matter, do you desire a proposed report?

Mr. SMITH. I would like to have one.

Mr. BURCHMORE. We would prefer to have one.

Mr. STRASSER. Yes.

Mr. SMITH. I think it would be helpful for us to have an opportunity of pointing out errors, if any, and suggesting things.

1084 Com. PATTERSON. I guess that is all. Before we adjourn I want to express my appreciation of the complete cooperation of counsel and witnesses.

Mr. BURCHMORE. I think it would not be out of place at all for counsel on either side here to say— want to personally say that I have been very much gratified that it was possible for Your Honor to preside at this hearing as a member of the Commission which passes on the case. I think it has been of some gratification to the complainant and the people of Decatur to have an Interstate Commerce Commission hearing here.

Mr. LE FORGEE. I think the people generally appreciate the fact that you came here and heard this case. I think it has aroused a lot more interest and attached a lot of local importance, and I hope there won't be any more that will call you back here on this kind of business, but we hope to see you often.

Mr. PATTERSON. Thank you. The hearing is closed.

(At 4:00 o'clock, Friday, April 26, 1940, the hearing was closed.)

1085 *Exhibit No. 17*

STATEMENT SHOWING METHODS EMPLOYED BY I. C. R. R. IN SERVING PLANT OF A. E. STALEY MFG. CO. AT DECATUR, ILL., WITH TARIFF AUTHORITY THEREFOR, FROM APRIL 1, 1912, TO DATE

Date		Method used in serving A. E. Staley Manufacturing Co. plant at Decatur, Ill.	Tariff authority
From—	To—		
Apr. 1, 1912	May 1922	Absorption of Wabash, B. & O. (C. H. & D. and C. I. & W.) switching charges (which roads switched the plant).	Item 498, page 74 I. C. R. R., I. C. C. No. A-8213.
May 1922	Apr. 2, 1930	Absorption of Wabash, B. & O. (C. I. & W.) switching charges (which roads made payment of terminal allowance to Staley Co. for service beyond interchange with plant tracks).	Item 498, page 74, I. C. R. R., I. C. C. No. A-8213.
Apr. 3, 1930	June 24, 1936	Operation over joint I. C. R. R.-I. T. R. R.-P. R. R. track and payment of terminal allowance to Staley Co. for service beyond interchange with plant tracks.	Rule 42, page 27-B; rule 50, page 28; item 324, page 37, I. C. R. R., I. C. C. No. A-8213, and I. C. R. R., I. C. C. Nos. A-10465, 10516, 10877.
June 25, 1936	June 14, 1937	Operation over joint I. C. R. R.-I. T. R. R.-P. R. R. track and payment to Wabash Railway of expense for service beyond interchange with plant tracks.	Rule 42, page 27-B, I. C. R. R., I. C. C. No. A-8213.
June 15, 1937	Nov. 14, 1937	Operation over joint I. C. R. R.-I. T. R. R.-P. R. R. track, payment to Wabash Railway of expense for service beyond interchange with plant tracks, and payment by Staley Co. of intraplant switching charge of $1 80 per car for service beyond interchange with plant tracks.	Item 324, page 37, I. C. R. R., I. C. C. No. A-8213.
Nov. 15, 1937	Dec. 10, 1937	Operation over joint I. C. R. R.-I. T. R. R.-P. R. R. track, payment to Wabash Railway of expense for service beyond interchange with plant tracks, and payment by Staley Co. of terminal charge of $2.27 per car for service beyond interchange with plant tracks.	Item 324, page 37; rule 42-L, page 27-B, I. C. R. R., I. C. C. No. A-8213, and Agent R. A. Sperry's I. C. C. No. 376.
Dec. 11, 1937	Date	Absorption of Wabash switching charges of 13 cents per ton, minimum $2.70, maximum $4.95 per car (effective Mar. 28, 1938, 14 cents per ton, minimum $2.97, maximum $5.45 per car) and payment by Staley Co. to Wabash Railway of terminal charge of $2.27 (effective Mar. 28, 1938, $2.50) per car for service beyond Wabash Railway, interchange with plant tracks.	Item 498, page 74, I. C. R. R., I. C. C. No. A-8213, and Agent R. A. Sperry's I. C. C. No. 376.
Dec. 15, 1939 (Suspended in I. & S. Dkt. 4736).	----------	Operation over joint I. C. R. R.-I. T. R. R.-P. R. R. track and beyond interchange with plant tracks, to and from loading and unloading locations in plant, at line haul rates to and from Decatur, Ill.	Rule 42-M, page 27-B; item 324-U, page 37, I. C. R. R., I. C. C. No. A-8213, and Agent R. A. Sperry's I. C. C. No. 455.

1086. Statement Reproducing Rule Covering Switching at Stations (Except Chicago and St. Louis) on Illinois Central R. R. (Northern Lines), From April 1, 1912, to Date

Rule No.	Effective	Free switching
42	April 1, 1912	(a) No switching charge will be assessed by the Illinois Central R. R. Co., for switching service performed by it at destination on carload freight arriving via this company and delivered direct to switches, tracks, warehouses, or industries reached by or connecting with the tracks of this company, or upon carload freight at points of origin received direct from switches, tracks, warehouses, or industries reached by or connecting with the tracks of this company and forwarded by this company.
42-J	Oct. 23, 1924	(a) No switching charges will be made by the I. C. R. R. for switching service performed by it at destination on carload freight arriving via this railroad and delivered direct to switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad, or upon carload freight at point of origin received direct from switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad and forwarded via this railroad.
42-L	Nov. 15, 1937	(a) No switching charges will be made by the I. C. R. R. for switching service performed by it at destination on carload freight arriving via this railroad, and delivered direct to switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad, or upon carload freight at points of origin received direct from switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad and forwarded via this railroad (see paragraph (e)). (e) On loaded cars forwarded from or to the plant of the A. E. Staley Mfg. Co., at Decatur, Ill., the terminal charges as provided in Agent R. A. Sperry's Tariff No. 79, I. C. C. 376, Ill. C. C. No. 184, will be in addition to the road haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission or the Illinois Commerce Commission.
42-M	Dec. 15, 1939 (Suspended in I. & S. 4736).	(a) No switching charges will be made by the I. C. R. R. for switching service performed by it at destination, on carload freight arriving via this railroad and delivered direct to switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad, or upon carload freight at points of origin received direct from switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad and forwarded via this railroad (see paragraph (e)). (e) Placement of cars at the A. E. Staley Mfg. Co., Decatur, Ill. Loaded cars received and empty cars for loading, via the Illinois Central R. R. will be placed for unloading or loading, as the case may be, at the A. E. Staley Mfg. Co., the rates for transportation to and from Decatur, Ill., lawfully on file with the Interstate Commerce Commission, including such service.

TARIFF AUTHORITY

Original and first to third revised pages 27 to I. C. R. R. ICC No. A-8213.
Original and first to sixteenth revised pages 27-A to I. C. R. R. ICC No. A-8213.
Original and first to fourteenth revised pages 27-B to I. C. R. R. ICC No. A-8213.

1087 STATEMENT REPRODUCING RULE COVERING ASSUMPTION OF SWITCHING CHARGES OF OTHER ROADS BY ILLINOIS CENTRAL R. R. EFFECTIVE APRIL 1, 1912 TO DATE

Item	Junction points	Connecting roads	Absorptions
498—Effective Apr. 1, 1912.	Decatur, Ill...	C. H. & D. Ry., Vandalia R. R., Wabash R. R.	Switching charges will be assumed in accordance with rules 60 to 63 inclusive, pages 70 and 71, subject to the following exception: EXCEPTION On corn products, C. L,. handled under milling-in-transit arrangements, as shown in Illinois Central R. R. Tariff No. 7679-C, I. C. C. A-8094, or subsequent issues, the Illinois Central R. R. will absorb one-half the switching charges of the Wabash R. R. from the mills located on the tracks of that line, and will also absorb one-half of the Wabash R. R. Co.'s switching charges to the mills on the tracks of that line on an equal number of carloads of corn to the number of carloads of products forwarded.
498—Effective Oct. 15, 1912.	Decatur, Ill...	C. H. & D. Ry. Vandalia R. R., Wabash R. R.	Switching charges will be assumed in accordance with rules 60 to 63 inclusive, pages 70 and 71, subject to the following exception: EXCEPTION Cancel.
498—Effective Feb. 1, 1917.	Decatur, Ill...	C. I. & W. R. R., Vandalia R. R., Wabash R. R.	Switching charges will be assumed in accordance with rules 60 to 63 inclusive, pages 70 and 71.
498—Effective July 11, 1919.	Decatur, Ill...	C. I. & W. R. R., P. C. C. & St. L. R. R., Wabash R. R.	Switching charges will be assumed in accordance with rules 60 to 63 inclusive, pages 70 and 71.
498—Effective Sept. 7, 1921.	Decatur, Il....	C. I. & W. R. R., P. C. C. & St. L. R. R., Wabash Ry.	Switching charges will be assumed in accordance with rules 60-B to 63 inclusive, pages 70, 70-A, and 71.
498—Effective Jan. 19, 1923.	Decatur, Ill...	C. I. & W. R. R., P. C. C. & St. L. R. R., Wabash Ry.	Switching charges will be assumed in accordance with rules 60-D to 63 inclusive, pages 70, 70-A, and 71.
498-A cancels 498—Effective June 28, 1924.	Decatur, Ill...	C. I. & W. R. R., Penn. R. R., Wabash Ry.	Switching charges will be assumed in accordance with rules 60-D to 63 inclusive, pages 70, 70-A, and 71, subject to the following exception: EXCEPTION L. C. L. freight.—Connecting railroads switching charges will be absorbed on not less than 6,000 pounds of miscellaneous shipments of less than carload competitive or noncompetitive freight between industries having private tracks and the regular freight depot of this company when loaded in one car, provided that each separate consignment is received or forwarded via the Illinois Central R. R. and pays the less than carload rate and that the switching charges on such cars do not exceed the charges on a full carload.

STATEMENT REPRODUCING RULE COVERING ASSUMPTION OF SWITCHING CHARGES OF OTHER ROADS BY ILLINOIS CENTRAL R. R. EFFECTIVE APRIL 1, 1912 TO DATE—Continued

Item	Junction points	Connecting roads	Absorptions
498-B cancels 498-A—Effective Feb. 23, 1925.	Decatur, Ill...	C. I. & W. R. R., Penn. R. R., Wabash Ry., Illinois Traction System.	Switching charges will be assumed in accordance with rules 60-D to 63-A inclusive, pages 70, 70-A, and 71, subject to the following exception: EXCEPTION L. C. L. freight.—Connecting railroads switching charges will be absorbed on not less than 6,000 pounds of miscellaneous shipments of less than carload competitive or noncompetitive freight between industries having private tracks and the regular freight depot of this company, when loaded in one car, provided that each separate consignment is received or forwarded via the Illinois Central R. R. and pays the less than carload rate, and that the switching charges on such cars do not exceed the charges on a full carload.
1088 498-A cancels 498-B—Effective July 1, 1922.	Decatur, Ill...	B. & O. R. R., Penn. R. R., Wabash Ry., Illinois Traction System.	Switching charges will be assumed in accordance with rules 60-E to 63-D inclusive, pages 70, 70-A, and 71 subject to the following exception: EXCEPTION L. C. L. freight.—Connecting railroads' switching charges will be absorbed on not less than 6,000 pounds of miscellaneous shipments of less than carload competitive or noncompetitive freight between industries having private tracks and the regular freight depot of this company when loaded in one car provided that each separate consignment is received or forwarded via the Illinois Central R. R. and pays the less than carload rate and that the switching charges on such cars do not exceed the charges on a full carload.
498-B cancels 498-A—Effective Nov. 15, 1937.	Decatur, Ill...	B. & O. R. R., Penn. R. R., Wabash Ry. Illinois Terminal Company (formerly Illinois Traction System).	Switching charges will be assumed in accordance with rules 60-F to 63-H inclusive, pages 70, 70-A, and 71, subject to the following exception (see note): EXCEPTION L. C. L. freight.—Connecting railroads' switching charges will be absorbed on not less than 6,000 pounds of miscellaneous shipments of less than carload competitive or noncompetitive freight between industries having private tracks and the regular freight depot of this company when loaded in 1 car, provided that each separate consignment is received or forwarded via the Illinois Central R. R. and pays the less than carload rate, and that the switching charges on such cars do not exceed the charges on a full carload (see note). NOTE.—Nonabsorption of terminal charges at Decatur, Ill.—On laded cars forwarded from or to the plant of the A. E. Staley Mfg. Co., at Decatur, Ill., the terminal charges as provided in Agent R. A. Sperry's Tariff 79; I. C. C. 376, Ill. C. Cs. No. 184 will not be absorbed and will be in addition to the road haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission or the Illinois Commerce Commission.

STATEMENT REPRODUCING RULE COVERING ASSUMPTION OF SWITCHING CHARGES OF OTHER ROADS BY ILLINOIS CENTRAL R. R. EFFECTIVE APRIL 1, 1912 TO DATE—Continued

Item	Junction points	Connecting roads	Absorptions
498-C cancels 498-B—Effective Dec. 15, 1933 (Suspended in I. & S. Dkt. 4736).	Decatur, Ill...	B. & O. R. R., Penn. R. R., Wabash Ry., Illinois Terminal R. R.	Switching charges will be assumed in accordance with Rules 60-F to 63-H, inclusive, pages 70, 70-A, and 71, subject to the following exception: EXCEPTION L. C. L. freight.—Connecting railroads' switching charges will be absorbed on not less than 6,000 pounds of miscellaneous shipments of less than carload competitive or noncompetitive freight between industries having private tracks and the regular freight depot of this company when loaded in 1 car, provided that each separate consignment is received or forwarded via the Illinois Central R. R. and pays the less than carload rate, and that the switching charges on such cards do not exceed the charges on a full carload.
498-B cancels 498-A—Effective Feb. 20, 1940.	Decatur, Ill...	B. & O. R. R., Penn. R. R., Wabash Ry., Illinois Terminal R. R. (formerly Illinois Traction System).	Switching charges will be assumed in accordance with rules 60-F to 63-H inclusive, pages 70, 70-A, and 71, subject to the following exception (see note): EXCEPTION L. C. L. freight.—Connecting railroads' switching charges will be absorbed on not less than 6,000 pounds of miscellaneous shipments of less than carload competitive or noncompetitive freight between industries having private tracks and the regular freight depot of this company when loaded in 1 car, provided that each separate consignment is received or forwarded via the Illinois Central R. R., and pays the less than carload rate, and that the switching charges on such cars do not exceed the charges on a full carload (see note): NOTE.—Nonabsorption of terminal charges at Decatur, Ill. On loaded cars forwarded from or to the plant of the A. E. Staley Mfg. Co., at Decatur, Ill., the terminal charges as provided in Agent R. A. Sperry's Tariff 79, I. C. C. 376, Ill. C. C. No. 184 will not be absorbed and will be in addition to the road haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission or the Illinois Commerce Commission.

(Rules 60 to 63 cover minimum line-haul revenue after absorptions.)

TARIFF AUTHORITY

Original and first to fourteenth revised pages 74 to I. C. R. R. Freight Tariff No. 1-C, I. C. C. No. A-8213.

STATEMENT SHOWING HISTORY OF AGENT R. A. SPERRY'S FREIGHT TARIFFS No. 79, I. C. C. No. 376, ILL. C. C. No. 184 AND No. 79-A, I. C. C. No. 455, NAMING TERMINAL CHARGES TO AND FROM THE A. E. STALEY MFG. CO. AT DECATUR, ILL.

Agent R. A. Sperry's Freight Tariff No. 79, I. C. C. No. 376, Ill. C. C. No. 184, effective Nov. 15, 1937. Published pursuant to Interstate Commerce Commission Ex Parte 104, part 2, 55th supplemental report:

Carriers parties to tariff are as shown below	I. C. C. FX. 1 No.	Ill. C. C. FX. 1 No.
The Baltimore and Ohio Railroad Company	173	26
Illinois Central Railroad Company	240	31
Illinois Terminal Company***	52	24
The Pennsylvania Railroad Company	50	23
Wabash Railway Company***	238	47

TERMINAL CHARGES

A charge of $2.27 per car (see Note 1) in addition to the line-haul charges will be made for each movement over industry tracks to or from the points of loading (see Note 2) or unloading (see Note 2) within the plant of the A. E. Staley Mfg. Co., of cars containing shipments originating or destined beyond Decatur, Ill.

NOTE 1.—Charge includes handling of empty cars subsequent to or preceding a loaded movement.

NOTE 2.—Point of loading means location at which car is finally loaded for road-haul movement. Point of unloading means location at which car is first placed for unloading subsequent to road-haul movement. The term points of loading and unloading also include storage tracks.

Supplement No. 1 to Agent R. A. Sperry's Freight Tariff No. 79 Ill. C. C. No. 184, issued Nov. 11, 1937. Issued ** in compliance with order of the Illinois Commerce Commission in Docket No. 26219 of Oct. 27, 1937.

SUSPENSION NOTICE

(Ill. C. C. Order 26219)

Pursuant to the foregoing order, Freight Tariff No. 79, Ill. C. C. No. 184 (R. A. Sperry, agent) is hereby suspended until Mar. 15, 1938.

Supplement No. 2 to Agent R. A. Sperry's Freight Tariff No. 79 Ill. C. C. No. 184, issued Mar. 12, 1938. Issued ** in compliance

with order of the Illinois Commerce Commission in Docket No. 26219, of Mar. 2, 1938.

RESUSPENSION NOTICE

(Ill. C. C. Order 26219)

Pursuant to the foreging order, Freight Tariff No. 79, Ill. C. C. No. 184, (R. A. Sperry, agent) is hereby suspended until Sept. 15, 1938.

Supplement No. 3 to Agent R. A. Sperry's Freight Tariff No. 79 I. C. C. No. 375, effective Mar. 28, 1938:

INCREASE IN RATES AND CHARGES

Effective Mar. 28, 1938, rates and charges then in effect in tariffs enumerated herein and in prior supplements thereto to each of which tariffs this is a special supplement, are hereby increased as provided in Tariff of Increased Rates and Charges No. X–123, viz: R. A. Sperry, I. C. C. No. 386, supplements to or successive issues thereof.

Supplement No. 4 to Agent R. A. Sperry's Freight Tariff No. 79 Ill. C. C. No. 184, effective Sept. 15, 1938. Issued in compliance with order of the Illinois Commerce Commission in Docket No. 26219 of July 26, 1938:

CANCELLATION NOTICE

Freight Tariff, Ill. C. C. No. 184, R. A. Sperry, Agent, I. F. A. T. B. Freight Tariff No. 79 is hereby withdrawn and canceled.

Agent R. A. Sperry's Freight Tariff No. 79–A (cancels Freight Tariff No. 79) I. C. C. No. 455 (cancels I. C. C. No. 376), effective Dec. 15, 1939:

Carriers parties to tariff are as shown below	I. C. C. FX. 1 No.
The Baltimore and Ohio Railroad Company	173.
Illinois Central Railroad Company	Cancel.[1]
Illinois Terminal Company***	Cancel.[1]
The Pennsylvania Railroad Company	54.
Wabash Railway Company***	Cancel.[1]

[1] Refer to tariffs of individual carriers lawfully on file with the Interstate Commerce Commission.

TERMINAL CHARGES

A charge of $2.50 per car (see Note 1) in addition to the line-haul charges will be made for each movement over industry tracks to or from the points of loading (see Note 2) or unloading (see Note

2) within the plant of the A. E. Staley Mfg. Co. of cars containing shipments originating or destined beyond Decatur, Ill.

NOTE 1.—Charge includes handling of empty cars subsequent to or preceding a loaded movement.

NOTE 2.—Point of loading means location at which car is finally loaded for road-haul movement. Point of unloading means location at which car is first placed for unloading subsequent to road-haul movement. The term points of loading and unloading also include storage tracks.

Supplement No. 1 to Agent R. A. Sperry's Freight Tariff No. 79-A, I. C. C. No. 455, issued Dec. 4, 1939. Issued under authority of Rule 9 (k) Tariff Circular 20 and in compliance with order of the Interstate Commerce Commission in Investigation and Suspension Docket No. 4736 of Nov. 21, 1939:

SUSPENSION NOTICE

I. & S. Docket No. 4736

The effective date of I. C. C. 455 is hereby suspended until July 15, 1940.

APPLICATION DURING PERIOD OF SUSPENSION

Pending restoration or cancellation thereof, provisions of I. C. C. 376 apply, unless sooner cancelled, changed, or reissued.

1090 ORDER OF ILLINOIS COMMERCE COMMISSION DATED JULY 26, 1938 IN DOCKET 26219, IN THE MATTER OF PROPOSED CHANGE IN TERMINAL CHARGES TO AND FROM THE A. E. STALEY MFG. CO. AT DECATUR, ILL., STATED IN FREIGHT TARIFF No. 79, ILL. C. C. No. 184, I. C. C. No. 376, R. A. SPERRY, AGENT

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

26219

In the Matter of PROPOSED CHANGE IN TERMINAL CHARGES TO AND FROM THE A. E. STALEY MANUFACTURING COMPANY AT DECATUR, ILLINOIS, STATED IN FREIGHT TARIFF No. 79, ILL. C. C. No. 184, FILED BY R. A. SPERRY, AGENT, ET AL.

ORDER

By the COMMISSION:

By schedules filed to become effective November 15, 1937, The Baltimore and Ohio Railroad Company (Sandusky, Willard,

Stewartsville, Belpre, Ohio, and West), the Illinois Central Railroad Company, the Illinois Terminal Company, The Pennsylvania Railroad Company, the Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), B. T. Jones, Agent, and R. A. Sperry, Agent, proposed to advance the Decatur rates applicable on carload traffic moving to and from the A. E. Staley Manufacturing Company by establishing a charge of $2.27 per car over and above the line-haul rate.

It appeared from an examination of the tariffs that the Commission should enter upon a hearing concerning the propriety of the proposed advances in charges and that, pending the hearing and the decision thereon, the said advanced charges should not go into effect.

By appropriate order the Commission suspended the proposed change in rates until March 15, 1938, and the investigation of the matter not having been concluded nor any decision having been rendered, the Commission on the 2nd day of March 1938, further extended the period of suspension until September 15, 1938, as by statute in such case made and provided.

Pursuant to notice as required by law, hearing was held in the office of the Commission in Springfield, Illinois, on March 22, 1938. The appearances at the said hearing were as follows:

Edward A. Kaier, appearing on behalf of the The Pennsylvania Railroad Company;

L. H. Strasser, appearing on behalf of the Receivers of the Wabash Railroad Company;

R. A. Sperry, Agent, appearing on behalf of respondents;

Robert Mitten, appearing on behalf of the Illinois Central Railroad Company;

Frank J. Goebel, appearing on behalf of the The Baltimore and Ohio Railroad Company;

T. C. Burwell and John S. Burchmore, appearing for the A. E. Staley Manufacturing Company.

Rates will be stated in dollars and cents per car or in cents per ton of 2,000 pounds, as the case may be, and the carriers will be referred to by their usual abbreviated designations.

The schedules under suspension in this proceeding provide a charge of $2.27 per car for the transportation of carload traffic between points of loading or unloading at the Staley plant at Decatur, Illinois, and the so-called interchange points with the line-haul carriers serving Decature. The charge provided in said schedules is in addition to the rate applicable to or from Decatur, as the case may be, on line haul traffic. The substance of the master tariff, issued by Agent Sperry, his Ill. C. C. Number 184, reads as follows:

TERMINAL CHARGES [1]

"A charge of $2.27 per car (see Note 1) in addition to the line-haul charges will be made for each movement over industry tracks to or from the points of loading (see Note 2) or unloading (see Note 2) within the plant of the A. E. Staley Manufacturing Company of cars containing shipments originating or destined beyond Decatur, Ill.

NOTE 1.—Charge includes handling of empty cars subsequent to or preceding a loaded movement.

NOTE 2.—Point of loading means location at which car is finally loaded for road-haul movement. Point of unloading means location at which car is first placed for unloading subsequent to road-haul movement. The term points of loading and unloading also include storage tracks."

Numerous companion schedules were filed contemporaneously by the several carriers reaching Decatur, in which it is proposed to change the provisions of their various freight tariffs so as to make the Decatur rates subject to the "Terminal Charge" provided in the foregoing master tariff.

Prior to May 1922, both the Wabash and the C. I. & W. (now the Baltimore & Ohio R. R. Co.) performed terminal service at the Staley plant with their own power. In order to simplify operations the protestant entered into an agreement with these carriers whereby the protestant received all carload traffic, in the case of in-bound material, at a convenient interchange point near its plant and with its own power placed said cars at the respective unloading platforms located within the plant, and, in the case of out-bound traffic, took the loaded cars from the respective loading platforms within the plant and delivered them to the interchange track with the line-haul carriers. For this service the line-haul carriers paid protestant its actual cost of performing the terminal switching, but not more than $1.83 per car.

On May 22, 1936, the Interstate Commerce Commission rendered its fifty-fifth supplemental report in the matter of A. E. Staley Manufacturing Company Terminal Allowance, 215 I. C. C. 656, in which, in substance, it was held, as to interstate traffic that the interchange tracks at the plant of the Staley Company are reasonably convenient points for the delivery and receipt of carload freight; that the transportation service for which the respondent carriers are compensated in their line-haul rates begins and ends at said points; that the service performed by the Staley Company beyond those points is a plant service; and that by payment of an allowance to the Staley Company for service performed

[1] Increase.

beyond these points on interstate shipments, respondent carriers provide the means by which the industry enjoys a preferential service not accorded to shippers generally, and refund or remit a portion of the rates or charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the Act.

At the same time the Interstate Commerce Commission entered an order in which the Wabash Railway Company, The Baltimore & Ohio Railroad Company, The Pennsylvania Railroad Company, The Illinois Central Railroad Company and the Illinois Terminal Company were notified and required to cease and desist on or before July 8, 1936, and thereafter to abstain from such unlawful practices. On July 7, 1936, protestant stopped performing the terminal service with its own engines and called upon the carriers to perform the work. Accordingly the allowance formerly paid to protestant was cancelled effective July 8, 1936, and the carriers themselves undertook to perform the service. This was accomplished by means of an operating agreement under which the Wabash performed the service on behalf of all carriers and was compensated by the other carriers on a pro rata cost basis.

1091 Although the order of the Interstate Commerce Commission required only that the carriers stop paying the allowance described above, the carriers interpreted it as requiring them to make a charge for the terminal service if they performed it themselves on both state and interstate traffic. The tariffs which are here under suspension place such a charge on intrastate traffic. Although the order of the Interstate Commission merely required the several roads serving Decatur to cease and desist payment of an allowance to the protestant upon intrastate traffic, respondents went further and provided a charge for performing terminal services at protestant's plant which protestant contends the carriers are bound to perform under the line-haul rate itself. Protestant asserts that this charge is wholly without precedent in the practice of the railroads in Illinois and, in fact, throughout the United States; that it alone has been singled out for this unusual treatment; and that the tariffs represent an effort to establish a charge for the placement of cars at points of loading and unloading which is a service invariably included within the measure of the freight rate in the State of Illinois and throughout the country.

Back as far as 1913 the railroads throughout the country, including the Illinois lines, proposed a general system of such charges to be applied at all industrial plants having so-called systems of plant tracks, but after an exhaustive investigation, the Interstate

Commission issued a sweeping report condemning such charges in principle, citing "Car Spotting Charges," 34 I. C. C. 609. In that case the Interstate Commission said:

"It has long been the custom of carriers in this country to receive and deliver carload freight upon spur tracks leading to private industries at convenient points for loading and unloading without imposing any charge for that service in addition to the line-haul rate, and in the Los Angeles case, 18 I. C. C. 310, we held that where this service is merely a substitute for team track receipt and delivery of carload freight the line-haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis. Our order in that case was upheld by the Supreme Court" (Los Angeles case, 234 U. S. 294).

The Interstate Commission further stated:

"As existing rates must be deemed to have been constructed to cover the customary placement of cars at factory doors, whether upon an industry spur or private siding, or upon the tracks of an industrial plant, and the outward movement of cars from such tracks, without regard to the size or nature of the plant, to now add a charge to the line-haul rate for that service would be revolutionary.

"While we have from time to time called the attention of the carriers to the possibility of increased revenues from certain sources, and have suggested that it might be that the carriers ought to make a charge in addition to the line-haul rate for some services in connection with the movement of cars within industrial plants, for which no such additional charge is now made, we have never intended to suggest that an additional charge would be proper for services which by long continued general custom and usage have been treated as covered by the line-haul rate."

While it is generally conceded that the line-haul rate covers the terminal services, exceptions have been made where the carriers were prevented from performing an uninterrupted service to the points of loading or unloading within the confines of a given industrial plant because of some action or disability of the industry, in which case the Interstate Commerce Commission has held that the carrier's duty with respect to the delivery and receipt of cars does not extend beyond the point of interruption or interference (General Electric Company vs. N. Y. C. R. R. Co., 14 I. C. C. 237). Protestant asserts that the operating conditions at its plant have been so changed since the decision of the Interstate Commerce Commission in this matter that the carriers are not now prevented from performing an uninterrupted service to the points of loading or unloading within the confines of its plant. This assertion was corroborated by the testimony of G. F. Jewell, Inspector of Trans-

portation of the Wabash, who testified, in substance, that there was no condition or disability or action of the Staley Company that interrupted the movement of cars by the Wabash in or out to the loading or unloading points.

Prior to December 10, 1937, all cars were delivered by the road line carriers, namely, the Illinois Terminal, the Baltimore & Ohio, the Illinois Central, the Pennsylvania, and the Wabash, at the established interchange point in the Burwell yard, which is located at the east end of the Staley plant. The Illinois Central, the Pennsylvania, and the Illinois Terminal used a joint track which ran through the city of Decatur up to Staley's Burwell yard, and the service over the joint track up to the interchange point in the Burwell yard was performed by the Illinois Central on behalf of the Pennsylvania, the Illinois Central, and the Illinois Terminal. From the foregoing point the Wabash moved the cars from the point of interchange to the point of loading or unloading, and moved the empty cars in the reverse direction. Such apparently was the operating arrangements at the time the Interstate Commerce Commission rendered its report in the foregoing case.

Effective December 10, 1937, the several road haul carriers delivered their cars to the Wabash at the regularly established interchange of those roads between themselves and the Wabash. The Illinois Terminal interchanges with the Wabash at a point on its Springfield line about one and three-quarters miles west of the Wabash passenger station. The Pennsylvania and Illinois Central interchange with the Wabash right at the Wabash passenger station. The Baltimore & Ohio interchanges traffic with the Wabash right in the Wabash yard, which is located about one-quarter mile south of its passenger station in Decatur. The cars, except as noted in the case of The Baltimore & Ohio, are then moved by the Wabash to its freight yard where the cars for Staley are switched out and are then set in on Track 4 in the Burwell yard, from which point they are placed by engines engaged solely within the plant. In the case of out-bound traffic the process is reversed. Witness Jewell testified that the volume of the service performed by the Wabash is less than the volume of service rendered prior to the change on December 10, 1937, because the Wabash now performs the classification in its own yard, whereas it was formerly done in the Staley yard. The same witness testified further that he knew of no other plant on the Wabash at which this carrier does not place the cars at loading and unloading points at the industry.

It further appears from the evidence that no other industry in the State of Illinois is subject to such a charge as here proposed, and that carload freight moving within the State of Illinois now, and for many years past, has been delivered to or taken from in-

dustrial tracks within the plant proper at the flat freight rate without any additional or plus charge for "spotting." Numerous witnesses appeared on behalf of protestant, many of whom were engaged in like business, and all testified that no charge over and above the line-haul rate is made for switching traffic to and from the loading and unloading points at their respective industries.

For many years the flat Decatur rate has applied on traffic moving to and from protestant's sidings within the plant. The charge proposed by the several tariffs under suspension would, in effect, increase the Decatur rate on such traffic as moves to and from the Staley Company plants. Carriers proposing to increase rates within the State of Illinois must assume the burden of justifying such increases, as the Commission cannot consent to the establishment of increased rates, the lawfulness of which has not been shown (Docket 20046, In the matter of proposed change in rates on iron and steel articles by The Atchison, Topeka & Santa Fe Railway Company, et al.). Instead of attempting to sustain that burden, respondents point out that the decision of the Interstate Commerce Commission is no longer applicable due to the change in operating methods effective as of December 10, 1937; and further point out that the only reason for proposing the foregoing charge was that respondents initiated it, responsive to the report of the Interstate Commerce Commission in a proceeding known as Ex Parte 104, Part II, Practices of Carriers Affecting Operating Revenues or Expenses, Terminal Services, 209, I. C. C. 11, and the supplemental report of the Commission in that proceeding, 215 I. C. C. 656. This record is convincing that the imposition of such a charge would result in unjust and unreasonable rates in violation of Section 32 of the Public Utilities Act, since no such charge
1092 is applied by respondent for a similar service at any other plant on the Wabash in the State of Illinois. The record is likewise convincing that to apply such a charge against protestant's traffic and to refuse or fail to apply similar charges against other carload traffic moving under substantially similar circumstances and conditions will subject protestant to an unlawful discrimination in violation of Section 38 of said Public Utilities Act.

From a consideration of all the evidence, both oral and documentary, the Commission being fully advised in the premises is of the opinion and finds:

1. That the respondent carriers herein are corporations engaged in the transportation of persons and property as common carriers in the State of Illinois and are public utilities as defined in Section 10 of an Act entiled "An Act concerning Public Utilities," approved June 29, 1921, effective July 1, 1921, and that the Com-

mission has jurisdiction of the subject matter in this proceeding and over the parties herein.

2. That by schedules filed to become effective November 15, 1937, the Baltimore & Ohio Railroad Company (Sandusky, Willard, Stewartsville, Belpre, Ohio, and West), the Illinois Central Railroad Company, the Illinois Terminal Company, The Pennsylvania Railroad Company, the Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers), B. T. Jones, Agent, and R. A. Sperry, Agent, propose to advance the Decatur rates applicable on carload traffic moving to and from the A. E. Staley Manufacturing Company by establishing a charge of $2.27 per car over and above the line-haul rate.

3. That numerous companion schedules were filed contemporaneously by the several carriers participating in the Decatur rates in which it is proposed to change the provisions of their various freight tariffs so as to make Decatur rates subject to the aforesaid charge of $2.27 per car.

4. That it appeared from an examination of the tariffs that the Commission should enter upon a hearing concerning the propriety of the proposed advances in such charges and that, pending the decision and the hearing thereon, the said advanced charges should not go into effect,

5. That by appropriate order the Commission suspended the proposed changes in rates until March 15, 1938, and the investigation of the matter not having been concluded, nor any decison having been rendered, the tariffs were further suspended until September 15, 1938.

6. That for many years prior to the filing of the proposed rates the A. E. Staley Manufacturing Company performed the terminal service at its plants in Decatur for and on behalf of the several railroads reaching Decatur, and for said services said railroads paid the said Staley Manufacturing Company its actual cost of performing the terminal service, but not more than $1.83 per car, and that by appropriate report and order the Interstate Commerce Commission as to interstate traffic held such allowance was unlawful and ordered the respondent carriers herein to discontinue this payment.

7. That upon discontinuance of payment of said allowance, said Staley Manufacturing Company called upon said several railroads serving Decatur to perform the terminal service, and thereupon, effective as of July 8, 1936, the said carriers undertook to and have since performed said service which was accomplished by means of an operating agreement by which the Wabash Railway Company performs all the switching at said plants and is compensated by the several carriers serving Decatur accordingly as they participate in the traffic on a pro rata cost basis.

8. That generally the line-haul rate in the State of Illinois and throughout the country includes the terminal service at point of origin and point of destination.

9. That wherever an exception is made under Finding No. 8 said exception is grounded on the fact that the carrier is prevented from performing an uninterrupted service to the points of loading or unloading within the confines of a given industrial plant because of some action or disability of the industry.

10. That the respondent carriers herein testified that there was no condition or disability or action of the Staley Manufacturing Company that interrupted the movement of cars by the Wabash in or out of loading or unloading points.

11. That the tariffs under suspension propose a charge in addition to the Decatur rate, and that although there are many other industries at Decatur taking private side track delivery, no such charge is proposed to be established on any traffic moving to or from Decatur except traffic moving to the A. E. Staley Manufacturing Company's plants.

12. That no such charge is proposed by the carriers at any other point in the State of Illinois.

13. That no such charge is proposed by the Wabash Railway Company at any other point in the State of Illinois served by it.

14. That the proposed rates would result in plus'ing the Decatur rate by an amount equal to $2.27 per car on all carload traffic moving to or from the Staley Manufacturing Company at Decatur and likewise result in unjust and unreasonable rates in violation of Section 32 of the Public Utilities Act.

15. That the establishment of said per car charge against the traffic of the A. E. Staley Manufacturing Company, and the failure or refusal to apply similar charges against other carload traffic moving under substantially similar circumstances and conditions would subject protestant, the Staley Manufacturing Company, to unlawful discrimination in violation of Section 38 of the said Utilities Act.

16. That the burden of proof that the proposal involved in this proceeding is just, reasonable, and otherwise lawful is upon the respondent carriers, and that the respondents have failed to sustain said burden.

17. That Supplement No. 14 to Local Freight Tariff No. H. 3555, Ill. C. C. No. WL-720, Supplement No. 29 to Tariff No. C. T. H. 427-B, Supplement No. 28 to Ill. C. C. No. WL-794, Supplement No. 16 to Local, Joint, and Proportional Freight Tariff No. H 3490-D, Ill. C. C. No. WL-900, Supplement No. 5 to Proportional Freight Tariff No. H 3264-H, Ill. C. C. No. WL-905, Supplement No. 3 to Local and Joint Freight Tariff No. H 3571-A, Ill. C. C. No. WL-907, Supplement No. 1 to Local Freight Tariff

No. H 3576-E, Ill. C. C. No. WL-911, Supplement No. 2 to Local Freight Tariff No. H 3527-A, Ill. C. C. No. WL-913, and Local and Proportional Freight Tariff No. H 3581-A, Ill. C. C. No. WL-915, of the Baltimore & Ohio Railroad Company (Sandusky, Willard, Stewartsville, Belpre, Ohio, and West) Thirteenth Revised Page 27-B, First Revised Page 27-C, Twenty-Eighth Revised Page 37, and Twelfth Revised Page 74 to Tariff No. 1-C, I. P. U. C. No. A-1, Supplement No. 2 to Tariff 14407-D, Ill. C. C. No. A-1480, and Supplement No. 3 to Tariff 7679-V, Ill. C. C. No. A-1481, of the Illinois Central Railroad Company, Supplement No. 1 to Freight Tariff No. 711-D, Ill. C. C. No. 220, Freight Tariff No. 755-R, Ill. C. C. No. 222, and Supplement No. 59 to Freight Tariff No. 194-K, Supplement No. 49 to Ill. C. C. No. 410 (I. T. S. Series), of the Illinois Terminal Company, Fourth Revised Page 114-A, Sixth Revised Page 152, Sixth Revised Page 193, and Fifth Revised Page 372 to Tariff Ill. C. C. 15, Supplement 51 to Tariff Ill. C. C. 67, Item 51 of Supplement 25 to Tariff Ill. C. C. 75, and Supplement 2 to Tariff Ill. C. C. 86, of The Pennsylvania Railroad Company, Supplement No. 28 to Local Freight Tariff, No. 0-13433, Supplement No. 26 to Ill. C. C. No. 962, Supplement No. 20 to Local and Joint Freight Tariff No. C-18214, Ill. C. C. No. 991, Supplement No. 31 to Local and Joint Freight Tariff No. V-5493, Supplement No. 27 to Ill. C. C. No. 1004, Supplement No. 8 to Local and Joint Freight Tariff No. J-5000, Supplement No. 5 to Ill. C. C. No. 1005, and Supplement No. 3 to Local Freight Tariff No. 19718, Ill. C. C. No. 1010, of the Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers, Supplement No. 12 to Freight Tariff No. 294-C, Ill. C. C. No. 342, filed by B. T. Jones, Agent, Freight Tariff No. 79, Ill. C. C. No. 184, filed by R. A. Sperry, Agent, and all other tariffs or schedules not herein specifically designated in so far as said other tariffs or schedules purport to change terminal charges to and from the A. E. Staley Manufacturing Company at Decatur, Illinois, effective November 15, 1937, should be permanently cancelled, annulled, and set aside in so far as the said schedules propose to establish a charge of $2.27 per car in addition to the line-haul charges for each movement over industry tracks to or from the points of loading or unloading within the plant of the A. E. Staley Manufacturing Company on carload shipments originating at or destined beyond Decatur, Illinois.

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It is therefore ordered, that Supplement No. 14 to Local Freight Tariff No. H 3555, Ill. C. C. No. WL-720, Supplement No. 29 to Tariff No. C. T. H. 427-B, Supplement No. 28 to Ill. C. C. No. WL-794, Supplement No. 16 to Local, Joint and Proportional Freight Tariff No. H-3490-D, Ill. C. C. No. WL-900, Supplement No. 5 to Proportional Freight Tariff No. H 3264-H, Ill. C. C. No.

WL–905, Supplement No. 3 to Local and Joint Freight Tariff No. H 3571–A, Ill. C. C. No. WL–907, Supplement No. 1 to Local Freight Tariff No. H 3576–E, Ill. C. C. No. WL–911, Supplement No. 2 to Local Freight Tariff No. H–3527–A, Ill. C. C. No. WL–913, and Local and Proportional Freight Tariff No. H 3581–A, Ill. C. C. No. WL–915 of The Baltimore and Ohio Railroad Company (Sandusky, Willard, Stewartsville, Belpre, Ohio, and West), Thirteenth Revised Page 27–B, First Revised Page 27–C, Twenty-Eighth Revised Page 37, and Twelfth Revised Page 74 to Tariff No. 1–C, I. P. U. C. No. A–1, Supplement No. 2 to Tariff 14407–D, Ill. C. C. No. A–1480, and Supplement No. 3 to Tariff 7679–V, Ill. C. C. No. A–1481, of the Illinois Central Railroad Company, Supplement No. 1 to Freight Tariff No. 711–D, Ill. C. C. No. 220, Freight Tariff No. 755–R, Ill. C. C. No. 222, and Supplement No. 59 to Freight Tariff No. 194–K, Supplement No. 49 to Ill. C. C. No. 410 (I. T. S. Series), of the Illinois Terminal Company, Fourth Revised Page 114–A, Sixth Revised Page 152, Sixth Revised Page 193, and Fifth Revised Page 372 to Tariff Ill. C. C. 15, Supplement 51 to Tariff Ill. C. C. 67, Item 51 of Supplement 25 to Tariff Ill. C. C. 75, and Supplement 2 to Tariff Ill. C. C. 86, of The Pennsylvania Railroad Company, Supplement No. 28 to Local Freight Tariff No. O–13433, Supplement No. 26 to Ill. C. C. No. 962, Supplement No. 20 to Local and Joint Freight Tariff No. C–19214, Ill. C. C. No. 991, Supplement No. 31 to Local and Joint Freight Tariff No. V–5493, Supplement No. 27 to Ill. C. C. No. 1004, Supplement No. 8 to Local and Joint Freight Tariff No. J–5000, Supplement No. 5 to Ill. C. C. No. 1005, and Supplement No. 3 to Local Freight Tariff No. 19718, Ill. C. C. No. 1010, of the Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers, Supplement No. 12 to Freight Tariff No. 294–C, Ill. C. C. No. 342, filed by B. T. Jones, Agent, Freight Tariff No. 79, Ill. C. C. No. 184, filed by R. A. Sperry, Agent, and all other tariffs or schedules not herein specifically designated in so far as said other tariffs or schedules purport to change terminal charges to and from the A. E. Staley Manufacturing Company at Decatur, Illinois, effective November 15, 1937, be, and the same are hereby, permanently cancelled, annulled, and set aside in so far as the said schedules propose to establish a charge of $2.27 per car in addition to the line-haul charges for each movement over industry tracks to or from the points of loading or unloading within the plant of the A. E. Staley Manufacturing Company on carload shipments originating at or destined beyond Decatur, Illinois.

By order of the Commission at Chicago, Illinois, this 26th day of July 1938.

[SEAL] (Signed) WILLIAM W. HART, *Secretary.*

564179—43——56

1094 Rates and charges on this page are not subject to increases provided for in Supplements Nos. 112 to I. C. C. No. A-8213, 101 to I. R. C. No. A-159, 80 to I. P. U. C. No. A-1, Nos. 220, 221, and 222 to tariff.

Illinois Central Railroad Company. I. C. R. R. Tariff No. 1-C, I. C. C. No. A-8213, I. P. U. C. No. A-1, I. R. C. No. A-159. Fourteenth Revised Page 27-B. (Cancels Thirteenth Revised Page.)

Item No. 286-M cancels Item 286-L.

RATES, RULES AND REGULATIONS GOVERNING SWITCHING OF CARS AT STATIONS ON THE ILLINOIS CENTRAL RAILROAD (NORTHERN AND WESTERN LINES), EXCEPT CHICAGO, EAST ST. LOUIS, ILL., AND ST. LOUIS, MO.

Rule No. 42-M (Cancels 42-L).

SWITCHING AT ORIGIN AND DESTINATION

(a) No switching charges will be made by the I. C. R. R. for switching service performed by it at destinations on carload freight arriving via this railroad and delivered direct to switches, tracks, warehouses or industries reached by or connecting with the tracks of this railroad, or upon carload freight at points of origin received direct from switches, tracks, warehouses or industries reached by or connecting with the tracks of this railroad and forwarded via this railroad. (See paragraph [e].)

(b) Cars loaded at industries located on the rails of the I. C. R. R. with L. C. L. freight aggregating 10,000 pounds or more per car, destined to points on or reached via I. C. R. R. will be switched (without additional charge for switching) to the regular freight depots of the I. C. R. R. at point of shipment (except as shown in paragraph c), to be reloaded and forwarded; provided that each separate consignment pays the L. C. L. rate. (See paragraph [e].)

(c) L. C. L. freight aggregating 6,000 pounds or more per car will be switched (without additional charge for switching) between the regular freight depot of the I. C. R. R. at Bloomington, Ill., Cairo, Ill., Cedar Falls, Iowa, Cedar Rapids, Iowa, Champaign, Ill., Charles City, Iowa, Council Bluffs, Iowa, Decatur, Ill., Dixon, Ill., Dubuque, Iowa, Freeport, Ill., Independence, Iowa, La Salle, Ill., Le Mars, Iowa, Litchfield, Ill., Madison, Wis., Mattoon, Ill., Metropolis, Ill., Omaha, Nebr., Paxton, Ill., Robinson, Ill., Sioux City, Iowa, Springfield, Ill., Vandalia, Ill., and Waterloo, Iowa, and industries located on the rails of the I. C. R. R., provided the I. C. R. R. receives the road haul, and that each separate consignment pays the less than carload rate. (See paragraph [e].)

When more than one car is received in one day by an industry, the freight contained in any one car may weigh less than 6,000 pounds provided the deficit under 6,000 pounds is offset by equal weight in excess of 6,000 pounds contained in other cars received by the same industry on the same day. In such cases the provisions of this rule will apply the same as to cars containing 6,000 pounds or over. (Applies only on shipments to one industry, within one plant enclosure.)

When more than one car is forwarded in one day by an industry, the freight contained in any one car may weigh less than 6,000 pounds, provided the deficit under 6,000 pounds is offset by equal weight in excess of 6,000 pounds contained in other cars forwarded by the same industry on the same day. In such cases the provisions of this rule will apply the same as to cars containing 6,000 pounds or over. (Applies only on shipments from one industry, within one plant enclosure.)

(Applies at Cedar Rapids, Iowa, Council Bluffs, Iowa, and Omaha, Nebr., only.) Except as otherwise provided above, when the weight of less carload shipments included in the lot is less than 6,000 pounds, the deficiency in weight will be charged for at rate of 22 cents per 100 pounds, and such charge must be paid by consignor on outbound shipments and by consignee on inbound shipments.

At Cedar Rapids, Iowa, Council Bluffs, Iowa, Dixon, Ill., Freeport, Ill., Madison, Wis., Omaha, Nebr., and Sioux City, Iowa, outbound cars from the industry must contain weight specified from one consignor (or may be from more than one consignor when they are companies subject to common ownership or control), and inbound cars to the industry must contain weight specified for one consignee, except on cars from or to industries doing a storage and/or warehouse business, storage house or warehouse will be considered as the industry on outbound and inbound traffic and cars may consist of traffic moving for account of one or more tenants or users of such warehouses.

At Freeport, Ill., Madison, Wis., and Omaha, Nebr., the service provided for above, may at the option of the I. C. R. R., be performed by the I. C. R. R. with highway vehicles and the same charges and regulations as shown for rail movement applied. No allowance will be accorded shipper or consignee when highway vehicle service such as contemplated by these provisions is performed with equipment individually owned or operated by shipper or consignee. The provisions of this paragraph will apply only when the freight in lots of 6,000 pounds or more, is received at or delivered at one point (industry, warehouse or store) designated by consignor or consignee. (MK–4571.)

Perishable freight will be handled at Freeport, Ill., Madison, Wis., and Omaha, Nebr., at carrier's liability, only when loaded in highway vehicles having facilities for protection from heat or cold, and the expense of protection from heat or cold shall be assumed by the shipper or consignee. When highway vehicles equipped with facilities for protection from heat or cold are not available, highway vehicles not so equipped may be used on condition that liability for damage from heat or cold shall be assumed by shipper or consignee.

L. C. L. freight aggregating 4,000 pounds or more, but less than 6,000 pounds, will be switched between the regular freight depot of I. C. R. R. at Champaign, Ill., or Freeport, Ill., and industries located on rails of I. C. R. R. for $2.97 per car in addition to regular freight charge provided the I. C. R. R. receives the road haul and that each separate consignment pays the L. C. L. rate. This charge will be collected from shipper on out-bound shipments and from consignee on inbound shipments. (Does not apply on shipments covered by paragraph [d] of Rule 42¼, page 27-C.)

(d) The weights of trap car shipments will be determined by the weights on which freight charges on the contents thereof are applied.

(e) Placement of cars at the A. E. Staley Manufacturing Company, Decatur, Ill.

Loaded cars received and empty cars for loading, via the Illinois Central R. R., will be placed for unloading or loading, as the case may be, at the A. E. Staley Manufacturing Company; the rates for transportation to and from Decatur, Ill., lawfully on file with the Intertsate Commerce Commission, including such service.

NOTE.—This rule is not to be construed to affect the requirements of the rules on meat peddler cars or on dairy products and other perishable freight, L. C. L., as covered by W. T. L. Circular 351, Agent L. E. Kipp's I. C. C. No. A-2662, Ill. C. C. No. 246, I. R. C. No. A-150, supplements thereto or successive issues thereof.

Issued November 10, 1939. Effective December 15, 1939. Issued by W. L. Reeves, General Freight Agent, 135 East Eleventh Place. Chicago, Ill.

Illinois Central Railroad Company. I. C. R. R. Tariff No. 1-C, I. C. C. No. A-8213, I. P. U. C. No. A-1, I. R. C. No. A-159. Thirteenth Revised Page 27-B. (Cancels Twelfth Revised Page.)

Item No. 286-L cancels Item 286-K.

RATES, RULES AND REGULATIONS GOVERNING SWITCHING OF CARS AT STATIONS ON THE ILLINOIS CENTRAL RAILROAD (NORTHERN AND WESTERN LINES), EXCEPT CHICAGO, EAST ST. LOUIS, ILL., AND ST. LOUIS, MO.

Rule No. 42–L (Cancels 42–K).

SWITCHING AT ORIGIN AND DESTINATION

(a) No switching charges will be made by the I. C. R. R. for switching service performed by it at destinations on carload freight arriving via this railroad and delivered direct to switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad, or upon carload freight at points of origin received direct from switches, tracks, warehouses, or industries reached by or connecting with the tracks of this railroad and forwarded via this railroad. (See paragraph [e].)

(b) Cars loaded at industries located on the rails of the I. C. R. R. with L. C. L. freight aggregating 10,000 pounds or more per car, destined to points on or reached via I. C. R. R. will be switched (without additional charge for switching) to the regular freight depots of the I. C. R. R. at point of shipment (except as shown in paragraph c), to be reloaded and forwarded; provided that each separate consignment pays the L. C. L. rate. (See paragraph [e].)

(c) L. C. L. freight aggregating 6,000 pounds or more per car will be switched (without additional charge for switching) between the regular freight depot of the I. C. R. R. at Bloomington, Ill., Cairo, Ill., Cedar Falls, Iowa, Cedar Rapids, Iowa, Champaign, Ill., Charles City, Iowa, Council Bluffs, Iowa, Decatur, Ill., Dixon, Ill., Dubuque, Iowa, Freeport, Ill., Independence, Iowa, La Salle, Ill., Le Mars, Iowa, Litchfield, Ill., Madison, Wisc., Mattoon, Ill., Metropolis, Ill., Omaha, Nebr., Paxton, Ill., Robinson, Il., Sioux City, Iowa, Springfield, Ill., Vandalia, Ill., and Waterloo, Iowa, and industries located on the rails of the I. C. R. R., provided the I. C. R. R. receives the road haul, and that each separate consignment pays the less than carload rate. (See paragraph [e].)

When more than one car is received in one day by an industry, the freight contained in any one car may weigh less than 6,000 pounds provided the deficit under 6,000 pounds is offset by equal weight in excess of 6,000 pounds contained in other cars received by the same industry on the same day. In such cases the provisions of this rule will apply the same as to cars containing 6,000 pounds or over. (Applies only on shipments to one industry, within one plant enclosure.)

When more than one car is received in one day by an industry, the freight contained in any one car may weigh less than 6,000 pounds, provided the deficit under 6,000 pounds is offset by equal weight in excess of 6,000 pounds contained in other cars received by the same industry on the same day. In such cases the provisions of this rule will apply the same as to cars containing 6,000 pounds or over. (Applies only on shipments from one industry, within one plant enclosure.)

(Applies at Cedar Rapids, Iowa, Council Bluffs, Iowa, and Omaha, Nebr., only.) Except as otherwise provided above, when the weight of less carload shipments included in the lot is less than 6,000 pounds, the deficiency in weight will be charged for at rate of 20 cents per 100 pounds, and such charge must be paid by consignor on outbound shipments and by consignee on inbound shipments.

At Cedar Rapids, Iowa, Council Bluffs, Iowa, Dixon, Ill., Freeport, Ill., Madison, Wis., Omaha, Nebr., and Sioux City, Iowa, outbound cars from the industry must contain weight specified from one consignor (or may be from more than one consignor when they are companies subject to common ownership or control), and inbound cars to the industry must contain weight specified for one consignee, except on cars from or to industries doing a storage and/or warehouse business, storage house, or warehouse will be considered as the industry on outbound and inbound traffic and cars may consist of traffic moving for account of one or more tenants or users of such warehouses.

At Freeport, Ill., Madison, Wis., and Omaha, Nebr., the service provided for above, may at the option of the I. C. R. R. be performed by the I. C. R. R. with highway vehicles and the same charges and regulations as shown for rail movement applied. No allowance will be accorded shipper or consignee when highway vehicle service such as contemplated by these provisions is performed with equipment individually owned or operated by shipper or consignee. The provisions of this paragraph will apply only when the freight in lots of 6,000 pounds or more, is received at or delivered at one point (industry, warehouse, or store) designated by consignor or consignee. (MK–4571.)

Perishable freight will be handled at Freeport, Ill., Madison, Wis., and Omaha, Nebr., at carrier's liability, only when loaded in highway vehicles having facilities for protection from heat or cold, and the expense of protection from heat or cold shall be assumed by the shipper or consignee. When highway vehicles equipped with facilities for protection from heat or cold are not

available, highway vehicles not so equipped may be used on condition that liability for damage from heat or cold shall be assumed by shipper or consignee.

L. C. L. freight aggregating 4,000 pounds or more, but less than 6,000 pounds, will be switched between the regular freight depot of I. C. R. R. at Champaign, Ill., or Freeport, Ill., and industries located on rails of I. C. R. R. for $2.70 per car in addition to regular freight charge, provided the I. C. R. R. receives the road haul and that each separate consignment pays the L. C. L. rate. This charge will be collected from shipper on outbound shipments and from consignee on inbound shipments. (Does not apply on shipments covered by paragraph [d] of Rule 42¼, page 27–C.)

(d) The weights of trap car shipments will be determined by the weights on which freight charges on the contents thereof are applied.

(e) [1] On loaded cars forwarded from or to the plant of the A. E. Staley Manufacturing Company at Decatur, Ill., the terminal charges as provided in Agent R. A. Sperry's Tariff No. 79, I. C. C. No. 376, Ill., C. C. No. 134, will be in addition to the road haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission or the Illinois Commerce Commission.

NOTE.—This rule is not to be construed to affect the requirements of the rules on meat peddler cars or on dairy products and other perishable freight, L. C. L.; as covered by W. T. L. Circular 351, Agent L. E. Kipp's I. C. C. No. A–2662, Ill. C. C. No. 246, I. R. C. No. A–150, supplements thereto or successive issues thereof.

Provisions covering Belleville, Ill., and Mounds, Ill., which appeared in paragraph (c), and provisions of paragraphs (e) and (f) of Rule 42–K, on 12th Revised Page 27–B, are transferred to Rule 42¼, 1st Revised Page 27–C.

(File Ex Parte 104, Part 2, 55th Supplemental Report.)

Issued October 12, 1937. Effective November 15, 1937. Issued by R. A. Trovillion, General Freight Agent, 135 East Eleventh Place, Chicago, Ill.

1095 *Exhibit No. 22—Witness Richardson*

1096 WABASH K–5000, I. C. C. 7169

GENERAL APPLICATION

Rules, Regulations, and/or Charges specifically provided in individual sections of this tariff take precedence over Rules, Regulations, and/or Charges shown under the General Application of Tariff that are in conflict therewith.

[1] Change in wording which results in neither increase nor reductions in charges.

CURRENT ITEM IN EFFECT

Item	Subject	Application
75	Free Switching	Except as otherwise provided, no charge will be made by Wabash Railway at the stations provided for herein, for setting cars to private tracks, team tracks or industries located on its own lines, for unloading or loading carload freight received from or to be forwarded to other stations via its line (see note). NOTE.—On loaded cars forwarded from or to plant of the A. E. Staley Mfg. Co. at Decatur, Ill., the terminal charges as provided in Agent R. A. Sperry's Tariff No. 79, I. C. C. No. 376 on Interstate traffic only, will be in addition to the road haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission.

SUSPENDED BY I. & S. DKT. 4736

75-A cancels 75	Free switching	Except as otherwise provided, no charge will be made by Wabash Railway at the stations provided for herein, for setting cars to private tracks, team tracks or industries located on its own lines, for unloading or loading carload freight received from or to be forwarded to other stations via its line. (105)

Published in Sup. 6 to I. C. C. No. 7169 (Wabash K–5000) to become effective December 15, 1939, and subsequently suspended by I. & S. Dkt. 4736 of November 21, 1939, until July 15, 1940 (in Sup. 7 to I. C. C. No. 7169).

(105) Provisions "(see note)," also explanation of "note" formerly provided in this item, are hereby eliminated; after date of cancellation no such provisions in effect.

1097 SECTION No. 2—MISCELLANEOUS SWITCHING CHARGES

CURRENT ITEM IN EFFECT

Item	Subject	Application
150-A cancels 150 [1]	Charges for extra switching service within the same district.	(a) Charge for subsequent switching after placement—except as otherwise provided for in tariff, the Wabash Ry. switching charge on a car which has been placed for delivery and subsequently forwarded to another track or private siding of the Wabash Ry. within the same switching limits for unloading, will be $6.93 per car. (Applies only on traffic on which the Wabash Ry. has received in-bound road haul.) NOTE.—Not applicable at Detroit, Mich. (See Detroit, Mich., page 19, column headed "Intra-Terminal Switching Charge.") (b) Intra-plant switching charge—except as otherwise provided for in tariff, when shipper or receiver desires any movement made from one location to another location within the confines of one industry or plant at the same station such movement will be made for $3.47 per car (see Note 1). NOTE 1.—Not applicable at Decatur, Ill., on interstate traffic (see Item 260). (c) On all other traffic, except that which is otherwise covered in the tariff, the local transportation charge in effect at the station where the service is performed, will apply.

[1] Published in Supplement No. 9 to I. C. C. No. 7169, Wabash K-5000.

SUSPENDED BY I. & S. DKT. 4736

Item	Subject	Application
150-B cancels 150-A.	Charges for extra switching service within the same district.	(A) Charge for subsequent switching after placement—except as otherwise provided for in tariff, the Wabash Ry. switching charge on a car which has been placed for delivery and subsequently forwarded to another track or private siding of the Wabash Ry. within the same switching limits for unloading, will be $6.93 per car. (Applies only on traffic on which the Wabash Ry. has received in-bound road haul.) NOTE.—Not applicable at Detroit, Mich. (See Detroit, Mich., page 19, column headed "Intra-Terminal Switching Charge.") (B) Intra-plant switching charge—except as otherwise provided for in tariff, when shipper or receiver desires any movement made from one location to another location within the confines of one industry or plant at the same station such movement will be made for $3.47 per car (see Note 1). Note 1 (107). (C) On all other traffic, except that which is otherwise covered in the tariff, the local transportation charge in effect at the station where the service is performed, will apply.
1098		

Published in Sup. 6 to I. C. C. No. 7169 (Wabash K–5000) to become effective December 15, 1939, and subsequently suspended by I. & S. Dkt. 4736 of November 21, 1939, until July 15, 1940 (in Sup. 7 to I. C. C. No. 7169).

(107) Provisions formerly shown in connection with this note are hereby eliminated; after date of cancellation no such provision in effect.

1099 SECTION NO. 3—ABSORPTION RULES, TRAP CAR RULES, AND TERMINAL ALLOWANCES

CURRENT ITEM IN EFFECT

EXCEPTIONS TO GENERAL ABSORPTION RULE

Item	Subject	Application
265	Additional switching at Decatur, Ill.	APPLICABLE ON INTERSTATE TRAFFIC ONLY Where a car which has received or will receive a road-haul, is moved from a location in a plant or industry after placement for loading or unloading to another location within the same plant or industry to complete loading or finish unloading, the charge for such service will be $1.98 per car (see Note). NOTE.—On loaded cars forwarded from or to the plant of the A. E. Staley Mfg. Co., the terminal charges as provided in Agent R. A. Sperry's Tariff No. 79, I. C. C. No. 376, will be in addition to the charge provided herein.

SUSPENDED BY I. & S. DKT. 4736

265-A cancels 265	Additional switching at Decatur, Ill.	APPLICABLE ON INTERSTATE TRAFFIC ONLY Where a car which has received or will receive a road-haul, is moved from a location in a plant or industry after placement for loading or unloading to another location within the same plant or industry to complete loading or finish unloading, the charge for such service will be $1.98 per car (105).

Published in Sup. 6 to I. C. C. No. 7169 (Wabash K–5000) to become effective Dec. 15, 1939, and subsequently suspended by I. & S. Dkt. 4736 of November 21, 1939, until July 15, 1940 (in Sup. 7 to I. C. C. No. 7169).

(105) Provisions "(see note)" also explanation of "note" formerly provided in this item, are hereby eliminated, after date of cancellation no such provisions in effect.

1100 EXCEPTIONS TO GENERAL ABSORPTION RULE

Item	Subject	Application
660	Nonabsorption of terminal charges at Decatur, Ill.	APPLICABLE ON INTERSTATE TRAFFIC ONLY On loaded cars forwarded from or to the plant of the A. E. Staley Mfg. Co. at Decatur, Ill., the terminal charges as provided in Agent R. A. Sperry's Tariff No. 79, I. C. C. No. 376, will not be absorbed and will be in addition to the road-haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission.
SUSPENDED BY I. & S. DKT. 4736		
660-A cancels 660	Nonabsorption of terminal charges at Decatur, Ill.	APPLICABLE ON INTERSTATE TRAFFIC ONLY Provisions formerly shown are hereby cancelled, after date of cancellation no such provisions in effect.

Published in Sup. 6 to I. C. C. No. 7169 (Wabash K-5000) to become effective Dec. 15, 1939, and subsequently suspended by I. & S. Dkt. 4736 of Nov. 21, 1939, until July 15, 1940 (in Sup. 7 to I. C. C. No. 7169).

1101 *Exhibit No. 24*

1102 APPLICABLE AT ALL STATIONS ON THE WABASH RY. EXCEPT ST. LOUIS, MO., KANSAS CITY, MO., CHICAGO, ILL., AND BUFFALO, N. Y.

EXCERPT

Wabash System Tariff 5000, Wabash System, I. C. C. 640,
Effective July 12, 1907

Free Switching.

Excepting as herein specified, no charge will be made by a Wabash System line at the stations provided for herein, for setting cars to private tracks, team tracks, or industries located on its own lines, for unloading or loading carload freight received from or to be forwarded to other stations via its line.

Excerpt, Present Application, Wabash Tariff K–5000, I. C. C. 7169

Free Switching.

Except as otherwise provided, no charge will be made by Wabash Railway at the stations provided for herein, for setting cars to

private tracks, team tracks, or industries located on its own lines, for unloading or loading carload freight received from or to be forwarded to other stations via its line (see Note).

NOTE.—On loaded cars forwarded from or to plant of the A. E. Staley Mfg. Co. at Decatur, Ill. the terminal charges as provided in Agent R. A. Sperry's Tariff No. 79, I. C. C. No. 376 on Interstate traffic only, will be in addition to the road haul rates to or from Decatur, Ill., lawfully on file with the Interstate Commerce Commission.

1103 APPLICABLE FOR ACCOUNT OF THE WABASH RY. AT ST. LOUIS-E. ST. LOUIS DISTRICT

Excerpt, Wabash Line's Tariff No. 5660, Wabash Line's ICC 796, Effective November 5, 1907

Free Switching.

Excepting as herein specified, no charge will be made by the Wabash R. R. at the stations provided for herein, for setting cars to private tracks, team tracks or industries located on its own lines, for unloading or loading carload freight received from or to be forwarded to other stations via its line.

Present Rule, Wabash Tariff C–18098, I. C. C. No. 7087

Free Switching.

Except as otherwise provided, no charge will be made by the Wabash Ry. for setting cars to private tracks, team tracks, or industries located on its own lines, within the switching limits as described in Item No. 50, for unloading or loading carload freight received from or to be forwarded to other stations via its line.

1104 APPLICABLE FOR ACCOUNT OF THE WABASH RY. AT KANSAS CITY, MO.

Supplement 5 to Wabash Tariff H–10019, I. C. C. 6230, Effective March 17, 1928

Item No. 108—Free Switching.

Except as herein specified, no charge will be made by the Wabash Railway for setting cars to private tracks, team tracks or industries located on its own lines within the switching limits, as described in Item No. 5, or reissues, for unloading or loading

carload freight, received from or to be forwarded to other stations via its lines.

Present Rule, Wabash Tariff No. M–10019, I. C. C. 7160

Item 85—Free Switching.

Except as herein specified, no charge will be made by the Wabash Railway for setting cars to private tracks, team tracks, or industries located on its own lines within the switching limits, as described in Item 5, for unloading or loading carload freight, received from or to be forwarded to other stations via its line.

1105 APPLICABLE AT POINTS LOCATED IN THE CHICAGO SWITCHING DISTRICT

Excerpt, L. A. Lowrey's Tariff 20–D, I. C. C. No. 17, Top of Pages 16 to 73, Inc., Effective Jan. 12, 1913

Rate Bases and Facilities.

Applying from or to points (except as noted) within the Chicago District (see note 2, page 7) on freight traffic destined to originating outside of the said Chicago District, via junctions within the Chicago District, in connection with tariffs, which the issuing carriers or their connections publish from or to Chicago, Ill.

Excerpt, L. A. Lowrey's Tariff 20–E, I. C. C. No. 22, Application Rule No. 1, Effective Jan. 22, 1914

Rate bases named herein apply from or to points within the Chicago District on freight traffic destined to or originating outside of the said Chicago District, via junctions within the Chicago District, in connection with tariffs which the issuing carriers or their connections publish from or to Chicago, Ill.

Except as otherwise specifically authorized in tariffs of issuing carriers lawfully on file with the Interstate Commerce Commission, the rate bases provided herein apply only to the first delivery within the Chicago District. Any additional movement beyond the first point of delivery will be subject to the rates from such first point of delivery, as published in tariffs lawfully on file with the Interstate Commerce Commission.

Excerpt, Illinois Freight Ass'n. Tariff 20-W, I. C. C. 442, R. A. Sperry, Agt.—Present Rule

Item No. 5—Application of Rate Bases.

(For description of Chicago Switching District referred to, see Note 2 of Section 5.)

Rate Bases named in Tariff, apply as follows:

(a) Traffic to or from points within the Chicago Switching Dist. On traffic originating at or consigned to points within the Chicago Switching District destined to or coming from points outside of said district via junctions within the Chicago Switching District, and on traffic where rate basis No. 4 is authorized.

1106 (1) Except as otherwise specifically authorized in tariffs of issuing carriers lawfully on file with the Interstate Commerce Commission or State Commission, the rate bases provided in tariff, apply only to the first delivery within the Chicago District. Any additional movements beyond the first point of delivery will be subject to the rates applicable from said first point of delivery as published in tariff's lawfully on file with the Interstate Commerce Commission or State Commissions.

(2) The rates applicable on the commodities named in the exceptions of the individual carriers shown in Section 7, will include the intermediate charge for switching or transfer unless otherwise provided for in said exceptions or in the tariffs of individual carriers shown in Section 7.

(3) Transfer of freight between Freight Houses in the Chicago Switching District may be performed by rail switching service or by highway vehicle service at the option of the carrier.

1107 In the Supreme Court of the United States

Statement of points to be relied upon and designation of the record to be printed

Filed Nov. 3, 1943

Come now the appellants and say that they will rely in brief and oral argument before this Court on the points made in their Assignment of Errors on their appeal in the above-entitled cause.

Appellants further state that the entire record in this cause, as filed in this Court pursuant to Praecipe of Transcript of Record, is necessary for consideration of the points specified above, with the exception of the exhibits introduced before the Interstate Commerce Commission, of which only the following designated

exhibits are necessary, to wit: pages 1 to 9, inclusive, and page 12 of Commission Exhibit No. 17; pages 1, 2, 2a, 3, and 4 of Commission Exhibit No. 22; and all of Commission Exhibit No. 24, pages 1 to 4a, inclusive, all such Commission exhibits being attached to and made a part of Court Exhibit No. 3.

Respectfully submitted.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
HOWARD L. DOYLE,
Howard L. Doyle,
United States Attorney,
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WENDELL BERGE,
Wendell Berge,
Per R. L. P.
Assistant Attorney General,
ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
EDWARD DUMBAULD,
Edward Dumbauld,
Per R. L. P.
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
ALLEN CRENSHAW,
Allen Crenshaw,
Attorney,
For the Interstate Commerce Commission.

I certify that service of a copy of the foregoing Statement of Points to be Relied upon and Designation of the Record to be printed has been served upon the following-named counsel for appellees by mailing a copy thereof on the 2nd day of November 1943: E. A. Smith, Esq., 135 East 11th Place, Chicago, Illinois; R. F. Butler, Esq., 135 East 11th Place, Chicago, Illinois; L. H. Strasser Esq., Railway Exchange Building, St. Louis, Mo.; John S. Burchmore, Esq., 2106 Field Building, Chicago, Illinois; C. C. Le Forgee, Esq., Citizens Bank Building, Decatur, Illinois.

ALLEN CRENSHAW
Allen Crenshaw,
Attorney.

1109 Supreme Court of the United States

Order noting probable jurisdiction

November 22, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 47946. S. Illinois, D. C. U. S. Term No. 453. The United States of America and Interstate Commerce Commission, Appellants vs. Wabash Railroad Company, Illinois Central Railroad Company and Illinois Terminal Railroad Company. Filed October 25, 1943. Term No. 453 O. T. 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1944

In the District Court of the United States for the Southern District of Illinois, Southern Division

CIVIL ACTION No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

JURISDICTIONAL STATEMENT BY THE DEFENDANT-APPELLANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. Statutory provisions

The statutory provisions believed to sustain the jurisdiction are:

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U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented

The decree sought to be reviewed was entered on June 14, 1943. The petition for appeal was presented and allowed on 1943, together with an assignment of errors.

C. Nature of cause and of rulings below

This is an appeal from a final decree of the District Court of the United States for the Southern District of Illinois, Southern Division, entered July 14, 1943, setting aside and permanently enjoining an order of the Interstate Commerce Commission entered May 6, 1941, in the case of *A. E. Staley Manufacturing Company Terminal Allowance,* 245 I. C. C. 383.

The report and order of May 6, 1941, found that switching service or "spotting" within the Staley plant is a plant service rather than a common-carrier service covered by the line-haul rates, and when performed by carriers without charge, would result in refunding or remitting a portion of charges made under line-haul rates, constitute a preference not accorded shippers generally and be a violation of Section 6 (7) of Part I of the Interstate Commerce Act (49 U. S. C. sec. 6 (7)). The Investigation and Suspension Docket 4736, which was consolidated, heard and decided with the *Staley* case, related to tariffs filed by the plaintiff carriers, effective December 15, 1939, proposing to cancel the charge of $2.50 per car that had been established under tariffs filed by all carriers serving that plant. In accord with its findings and conclusions, the Commission entered an order requiring plaintiff-appellees to cancel the suspended tariffs effective August 15, 1941.

The report and order of May 6, 1941, resulted from the reopening and reconsideration of the *Staley* case which had previously been heard and decided on May 22, 1936 (215 I. C. C. 656), as the 55th Supplemental Report under *Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services,* 209 I. C. C. 11. The *Ex Parte 104* proceedings were instituted by the Commission upon its own motion by order dated July 6, 1931. A large volume of evidence was developed relating to terminal services and allowances at numerous industrial plants throughout the country. Upon that record, the Commission found that many industries received free switching services, or allowances therefor when performed by the industry, while many others received no such free service or allowance under similar circumstances, and that such practice obtained in relatively small areas of the country and had never been extended to New England, the Southeast, or the extreme Southwest. It was found that where switching services involve distribution of cars over intricate systems of interlacing tracks within industrial plants at points of loading and unloading, not at the convenience of the carriers but to meet industrial needs, the rendering of such switching service (or allowance therefor) is beyond the line-haul obligation, constitutes a preference not accorded shippers generally, and is unlawful under Section 6 (7) of the Interstate Commerce Act.

In proceedings under *Ex Parte 104*, the Commission decided the question of terminal services or allowances in respect to a number of industrial plants, each as a supplemental report to *Ex Parte 104*. The *Staley* case was decided as the 55th Supplemental Report thereto. At that time, switching services were performed by Staley at its plant, and the carriers granted it allowances therefor. The Commission found these allowances to be for services beyond the line-haul obligation, a preferential service not accorded shippers generally, and a violation of Section 6 (7) of the Interstate Commerce Act.

A number of these industries, including the Staley Company, instituted court action to set aside and enjoin the Commission orders. Some of these cases reached the Supreme Court upon appeal, and the Commission's orders were sustained in *United States* v. *American Sheet and Tin Plate Company*, 301 U. S. 402; *Goodman Lumber Company* v. *United States*, 301 U. S. 669; *A. O. Smith Corp.* v. *United States*, 301 U. S. 669; and *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156. Afer these decisions, the Staley Company voluntarily dismissed its court action which had not yet been decided by the district court.

On March 16, 1938, the Staley Company filed a had been substituted for an *ad interim* pool arreconsideration, on the ground that a new ar-

rangement, with certain changes in the switching, petition with the Commission for rehearing and rangement. By order of April 8, 1938, the Commission accordingly reopened the *Staley* case to determine what changes, if any, had been made in switching and whether the previous decision might be thereby affected.

On November 15, 1937, the five carriers serving the Staley plant filed tariffs establishing the charge of $2.27 per car (later increased to $2.50) for switching services within that plant. While the rehearing and reconsideration of the *Staley* case was pending, three of these five carriers, plaintiff-appellees herein, filed schedules to become effective December 15, 1939, proposing to cancel the charge of $2.50 per car then in effect. Because those schedules depended for justification upon the decision in the *Staley* case, the Commission ordered the schedules suspended in proceedings I. & S. 4736 and consolidated those proceedings with the *Staley* rehearing.

At this rehearing proceeding, the Staley Company and the three rail carriers introduced evidence tending to show that terminal services had been and were being rendered without charge at a number of neighboring, competitive industrial plants with allegedly similar switching operations. No direct proceeding has ever been instituted before the Commission by the Staley Company, the plaintiff-appellee carriers, or anyone else, requir-

ing consideration and decision by the Commission as to terminal services rendered at such other industrial plants, and the Commission had not, on its own motion, instituted any proceedings upon which to base a decision of such questions.

The Commission's report of May 6, 1941, held, in respect to the evidence as to such other plants that it did not satisfactorily show that the conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant, and if it did, that it would only show the probable existence of unlawful practices at such plants and need for investigation.

The complaint herein was filed by the Wabash, Illinois Central, and Illinois Terminal Railroads, on June 1, 1942, pursuant to provisions of Section 41 (28) and Sections 43–48 of Title 28, U. S. C., against the United States and the Interstate Commerce Commission, seeking to set aside and enjoin the Commission order of May 6, 1941, as entered in the above-described proceedings. The Staley Company intervened in behalf of the plaintiffs. The principal grounds stated in the complaint are that the Commission acted beyond the scope of its statutory authority, contrary to law; that the order of May 6, 1941, is unsupported by substantial evidence; and that the report and order resulted in discrimination and preference against the Staley Company, since the Commission had failed to enforce similar switching

charges against nearby, competitive industries. The opinion of the specially constituted court recognized, as unchallenged, the validity of the Commission's action under prior orders entered under *Ex Parte 104,* presumably including the authority of the Commission to decide in the *Staley* case whether or not the terminal services there are beyond the line-haul obligation. The court stated the principal contention to be that the Staley Company is unduly prejudiced because competing industries in the Decatur, Illinois, vicinity are receiving spotting services from the carriers without charge, which amounts to a continuing discrimination against Staley. It held, Circuit Judge Evans dissenting, that the report and order oblige the carriers to discriminate against Staley, in violation of Sections 2 and 3 of the Interstate Commerce Act (49 U. S. C. secs. 2, 3); that the order is discriminatory, unjust, and unreasonable; and that the order is, in part, unsupported by the evidence.[1] The court opinion attempts to distinguish two decisions of the Supreme Court upon the erroneous assumption that questions of discrimination as here presented were not there before the Court.

The district court has improperly assumed the decision of questions of fact as to the similarity

[1] Upon the basis of the partial record before it, the court incorrectly held that finding of fact three was without evidentiary support and that conclusion of law three was consequently unwarranted.

of switching services at the Staley plant as compared to services rendered to other plants, and as to discrimination and preference under Sections 2 and 3 of the Interstate Commerce Act. Jurisdiction of the court in such cases does not include authority to decide administratively questions of discrimination and preference under Sections 2 and 3, matters which are for the determination of the Commission.

The questions presented by this appeal are substantial. They involve interpretation and application of Sections 2, 3, and 6 (7) of the Interstate Commerce Act relating to practices by carriers of discriminations and preferences and the scope of court authority upon review of Commission orders under the provisions of Sections 41 (28) and 43–48 of Title 28, U. S. C. The decision of the lower court would, if allowed to stand, establish principles impinging upon the power of the Commission to remove and prohibit discriminations and preferences prohibited by the Interstate Commerce Act and would avoid the enforcement of principles already approved by the Supreme Court. Since the decision appears contrary to well-recognized principles of judicial review in such cases, and to be contrary to Supreme Court decisions in similar cases, it is important that this decision be reviewed.

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D. Cases sustaining the Supreme Court's jurisdiction on appeal

Board of Trade of Kansas City v. *United States*, 314 U. S. 534.

Union Stock Yard Co. v. *United States*, 308 U. S. 213.

United States v. *Pan American Petroleum Corp.*, 304 U. S. 156.

United States v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454.

Mississippi Valley Barge Co. v. *United States*, 292 U. S. 282.

Florida v. *United States*, 292 U. S. 1.

Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420.

Assigned Car Cases, 274 U. S. 564.

Virginian Ry. v. *United States*, 272 U. S. 658.

Western Paper Makers' Chemical Co. v. *United States*, 271 U. S. 268.

Texas & Pacific Ry. Co. v. *United States*, 162 U. S. 197.

E. Decree and opinion of the district court

Appended to this statement are copies of the opinion, findings of fact, conclusions of law, and the final decree of the district court.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated July 30th, 1943.

CHARLES FAHY,
Solicitor General,
HOWARD L. DOYLE,
United States Attorney,
TOM C. CLARK,
Assistant Attorney General,
ROBERT L. PIERCE,
EDWARD DUMBAULD,
Special Assistants to the Attorney General,
for the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
ALLEN CRENSHAW, *Attorney,*
for the Interstate Commerce Commission.

Indorsed: Filed Aug. 26, 1943.
G. W. SCHWANER,
Clerk.

In the District Court of the United States for the Southern District of Illinois, Southern Division

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CIVIL ACTION No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before a three-judge District Court composed of Evans, Circuit Judge, and Lindley and Briggle, District Judges

BRIGGLE, *District Judge:*

This is a proceeding to set aside the order of the Interstate Commerce Commission, entered May 6, 1941, entitled *Report on Further Hearing of Issues Included in the 55th Supplemental Report*, 245 I. C. C. 383, which report and order may be said to be supplementary to *Ex Parte 104, Practices of Carrier Affecting Operating Revenues or Expenses; Part 2, Terminal Services*, 209 I. C. C. 11. The Plaintiffs are common carriers whose

lines of railroad traverse and serve the city of Decatur and the surrounding area in the Southern District of Illinois. The Intervenor, A. E. Staley Manufacturing Company is engaged in the processing of grain, including corn and soy beans and the manufacture of various products therefrom at Decatur, Illinois. It receives annually by rail at its plant large quantities of grain, soy beans, and raw materials of all kinds and ships by rail from its plant large quantities of manufactured products.

The history of the proceeding is long. Briefly stated, it arose in 1931, when the Commission upon its own motion instituted a proceeding entitled *Ex Parte 104* which was an investigation of practices of Class 1 Rail Carriers in respect to terminal switching charges and allowances paid by carriers where industries performed their intraplant switching or spotting services. Hearings were held throughout the country in which many industries and carriers participated and a large volume of evidence was taken. On May 14, 1935, the commission made its report, 209 I. C. C. 11, in which it stated its general conclusions as to the obligations of line haul carriers to render spotting service and the principles governing such obligations. Subsequent thereto the Commission made numerous supplemental reports undertaking to apply the principles there enunciated to specific plants and industries, some of which have been

before and have been approved by the Supreme Court, notably *United States* v. *American Sheet and Tin Plate Co.*, 301 U. S. 402; *Goodman Lumber Co.* v. *United States*, 301 U. S. 669; *A. O. Smith Corporation* v. *United States*, 301 U. S. 669; *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156. The 55th of these Supplemental Reports, made on May 22, 1936, concerned spotting service at the plant of the Intervenor, A. E. Staley Manufacturing Company. In this report the Commission found that the intraplant spotting of cars then performed by the Staley Company, for which the railroads paid Staley an allowance was a private service not within the obligations of the carriers and covered by their line-haul rate and that the assumption of such obligation by the carriers was a violation of Section 6 (7) of the Interstate Commerce Act. The Commission made an order requiring the carriers to cease and desist from the payment of such allowances.

Subsequently, the Staley Company ceased performing such spotting service and arranged with the carriers to do the same and a charge of Two Dollars and Fifty Cents ($2.50) per car was established for such service, in addition to the line-haul rates. Later the plaintiff carriers by schedules effective December 15, 1939, proposed to cancel such charge for spotting services in the Staley plant but the Commission by their order

of May 6, 1941, suspended the operation of such proposed schedule, leaving the spotting charge against Staley in full force and effect. Neither Plaintiffs or Intervenor challenges in this proceeding the validity of prior orders entered in *Ex Parte 104,* but the principal point of contention arises from the assertion of the Plaintiffs and the Intervenor and denial by defendants that by the order of May 6, 1941, the Staley Company is unduly prejudiced by reason of the fact that competing industries at Decatur, Illinois, and other places within the state are receiving spotting services from the carriers without charge. The carriers and Staley assert that the order exacting a charge from Staley amounts to a continuing discrimination against Staley.

The Commission made six findings of fact and six conclusions of law. Finding of fact five is, as follows:

> 5. All services between the tracks described in the immediately preceding finding and points of loading and unloading within the plant area of the Staley Company are services in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs.

Conclusion of law three is, as follows:

> 3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a) from Bur-

well yard tracks to points of unloading within the plant area of the Staley Company (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the act.

Among other contentions, it is claimed by Plaintiffs and Intervenor that finding five is unsupported by the evidence or by the finding of any basic facts to support it, and that Conclusion 3 is, therefore, unwarranted.

At the hearing before the Commission much evidence was introduced on this point to show that spotting service was being rendered by the carriers without charge other than the line-haul tariffs, to numerous industries at Decatur and throughout Illinois and particularly to those engaged in direct competition with Staley. We think it fair to say that the evidence in the record is uncontradicted that Staley is the only concern at Decatur or within a reasonable radius

thereof that is now being required to pay a spotting charge. At Decatur, Illinois, the Archer-Daniels-Midland Co., Decatur Soya Bean Products Co., and Spencer Kellogg & Sons, all of whom are in direct competition with Staley are without exception receiving spotting service under conditions comparable to those existing at the Staley plant. The Corn Products Refining Co. at Argo, Illinois, shown by the evidence to be one of the largest producers of corn products in the country, with some eighteen or twenty miles of track within its plant and with at least twenty points of loading and unloading within the plant, has always received spotting service. This plant is one of Staley's chief competitors. The Plaintiffs, Illinois Central Railroad Company and Illinois Terminal Railroad Company make no spotting charge for the delivery or receipt of freight upon their entire systems with the single exception of the Staley plant. The Plaintiff, Wabash Railroad Company was obliged to except the Staley Plant from the operation of their general rule that no charge be made for spotting cars. Witnesses appeared from numerous competitors of Staley, such as American Maize Products Co., Penick & Ford, Ltd., Hubinger Co., Union Starch & Refining Co., and Allied Mills, all asserting that they knew of no industry required to pay a spotting charge similar to Staley.

The Commission brushed aside this feature of the case with the following statement in its report:

> Considerable evidence was introduced showing that spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigation in connection therewith.

While the Commission says that the evidence does not satisfactorily show that the conditions at other plants are substantially similar to those at the Staley plant, yet the *only* evidence in the record on this subject very strongly tends to show similarity. By its further statement that if it did it would only demonstrate the need for investigations at other plants, it appears that the Commission was of the belief that each case must stand on its own bottom and be considered by the Commission independent of any other and without relation to the palpable inequities bound to flow from an order not applicable to all similarly situated. We think this too narrow a view. It is suggested that it is no defense for one charged with an offense to retort that others are

guilty of like offenses. However sound this doctrine may be in relation to criminal proceedings it does not seem to be quite appropriate to the situation here presented. Where one industry of many in a highly competitive field is singled out and subjected to a tariff not imposed on any other and under compulsion of the order of the Commission obliged to pay such tariff for a number of years without relief and without action to establish like tariffs for competing industries, the order becomes an instrument of destruction. Such treatment long continued could only mean extinction of the industry thus affected. So surely as "the power to tax is the power to destroy," so is the power of rate regulation when applied inequitably.

We think the finding of the Commission that the practice of furnishing spotting service to Staley by the carriers would accord Staley more favorable treatment than others, not supported by the evidence. The substantial evidence indicates quite the contrary. It indicates that under the present order Staley is being discriminated against. It thwarts the real purpose of the Commission to remove discrimination in certain instances where carriers may have accorded a preferential service to one customer over another. The order here obliges the carriers to discriminate against Staley, and, as they assert against their will, and in violation of Sections 2 and 3 of the Act.

We think that *United States* v. *American Sheet and Tin Plate Co., supra,* is not to be deemed authority contrary to the view here expressed. While it is true that the Supreme Court there said in affirming the order of the Commission that the Commission had properly held that each case must be decided upon the circumstances disclosed, yet the question of discrimination here presented was not before the Court. In that case and in *United States* v. *Pan American Petroleum Co., supra,* the Court was dealing with a number of like orders in relation to a group of competing industries and no question of one industry having received different treatment from all others was before the Court.

To give full meaning to the Act and to translate the intention of Congress into equitable application requires a consideration of the Act as a whole. We know from Sections 2 and 3[1] that it

[1] SEC. 2. Special rates and rebates prohibited. If any common carrier subject to the provisions of this chapter shall, directly or indirectly by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed

was the express purpose of Congress to require carriers to accord equal and just treatment to all shippers. The evil to be corrected in this respect was the tendency of carriers in some instances to accord some shippers more favorable treatment than others. It was expressly declared a vicious practice to give one shipper a preference or advantage over another, or conversely, to subject any shipper to any undue or unreasonable prejudice or disadvantage. It cannot be gainsaid that that is precisely what the carriers are being forced to do in the case at bar under compulsion of the order in question. The Commission in its purpose to do justice to the carriers has inadvertently brought about such flagrant injustice to the intervening shipper as to shock the conscience of a court of equity. So far as we know, this precise question has never been before any Court, but with a firm belief in the doctrine that no wrong shall exist without a remedy it seems to us that the Commission must meet the problem head on and devise some over-all method of deal-

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guilty of unjust discrimination, which is prohibited and declared to be unlawful.

SEC. 3. Preferences; interchange of traffic; terminal facilities—(1) Undue preferences or prejudices prohibited. It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

ing with competitive industries that will eliminate the injustice here so apparent. Otherwise, the purpose of the Act will be thwarted and the resultant inequities will outweigh the evils sought to be corrected. See *U. S.* v. *C. M. St. P. & P. R. Co.*, 294 U. S. 499.

We think the order in question discriminatory, unjust and unreasonable, and in so far as finding five and conclusion three are concerned not supported by the evidence. The prayer for injunction is allowed.

Intervenor's request for accounting and reimbursement is a question for the Commission.

EVANS dissents.

In the District Court of the United States for the Southern District of Illinois, Southern Division

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CIVIL ACTION No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINDINGS OF FACT

1. Plaintiffs are railroad corporations whose lines of railroad traverse the area included within the southern district of Illinois. Each of said plaintiffs owns and operates lines of railroad which reach and serve the City of Decatur, Macon County, Illinois, in said district.

2. The A. E. Staley Manufacturing Company is engaged in the processing of grain, including corn and soybeans, and the manufacture of various products thereof at Decatur, Illinois. It receives annually by rail at its plant large quantities of grain, soybeans, and raw materials of all kinds, and ships by rail from its plant large quantities of products manufactured by it.

3. The Interstate Commerce Commission in a certain supplemental report, entered in a proceeding known as *Ex Parte 104, Part II, Terminal Services,* 215 I. C. C. 656, hold upon the record then before it that the interchange tracks at the Staley plant described in the record were reasonably convenient points for the delivery and receipt of carload freight; that the transportation services for which these plaintiffs were compensated in their line-haul rates began and ended at said points, and that the services then performed by the A. E. Staley Manufacturing Company beyond those points were plant services. The Commission further held that by the payment of an allowance to the A. E. Staley Manufacturing Company for the services performed beyond those points on interstate shipments, these plaintiffs provided the means by which the A. E. Staley Manufacturing Company enjoyed a preferential service not accorded to shippers generally, and refunded or remitted a portion of the charges collected or received as compensation for the transportation of property in violation of Section 6 (7) of the Interstate Commerce Act, and respondents therein were ordered to cease and desist from further payment of said allowance.

4. The Commission's aforesaid order of May 22, 1936, was first issued to become effective September 15, 1936, and was postponed from time to time and did not take effect until June 15, 1937. On

June 23, 1936, however, the A. E. Staley Manufacturing Company ceased to perform switching service at its plant, the aforesaid allowance was thereupon discontinued and canceled, and the services connected with the placing of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company were performed by the Wabash Railroad beginning with June 23, 1936.

5. Plaintiffs, on November 15, 1937, in compliance with the findings of the Commission in its said report in *Ex Parte 104, Part II, Terminal Services*, 215 I. C. C. 656, established a charge of $2.27 per car against the A. E. Staley Manufacturing Company for the placement of cars at loading and unloading points within said Company's plant. This charge was later increased to $2.50 per car. At the time the charge of $2.27 was proposed, the A. E. Staley Manufacturing Company filed a petition with the Commission protesting against the charge and seeking a suspension of the tariffs stating the charge. The A. E. Staley Manufacturing Company, in its protest, said that the application of the charge would create undue prejudice and unjust discrimination against A. E. Staley Manufacturing Company.

6. The A. E. Staley Manufacturing Company filed several petitions with the Interstate Commerce Commission, asking the Commission to reopen the proceedings known as *Ex. Parte 104,*

Part II, Terminal Services, 215 I. C. C. 656. (Petitions of June 16, 1936, May 29, 1937, and March 16, 1938.)

7. The Interstate Commerce Commission, by an order dated April 8, 1938, modified by its order of May 4, 1938, reopened the *Ex Parte 104, Part II, Terminal Services* proceeding for further hearing, limited to the presentation of evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery, or receipt of cars handled to or from the Decatur, Illinois, plant of the A. E. Staley Manufacturing Company. A tentative report on the further hearing was proposed on or about November 1, 1938, by Special Examiner King of the Interstate Commerce Commission.

8. The Interstate Commerce Commission, in its report of May 6, 1941, said that an incomplete record resulted from that limited reopening, and on July 29, 1939, the Commission, on its own motion, again reopened the proceeding for further hearing concerning, and limited to, the operating or other conditions at the A. E. Staley Manufacturing Company plant with respect to delivery or receipt of cars handled to or from its plant, including interchange arrangements with the connecting lines on such traffic, and to intra-plant movements within said plant.

9. Notwithstanding this order of July 29, 1939, reopening the case for further hearing, the Com-

mission took no action toward setting the case down for a further hearing.

10. Plaintiffs, on November 10, 1939, filed tariff schedules to become effective on December 15, 1939, whereby they proposed to cancel the charge of $2.50 then being collected from the A. E. Staley Manufacturing Company for the placement of cars for loading and unloading at points within the plant of the A. E. Staley Manufacturing Company and further provided that their freight rates to and from Decatur include the movement of the cars to and from loading and unloading points in the Staley plant. These tariff schedules were suspended by the Commission in *investigation and suspension docket No. 4736, switching charges at Decatur, Illinois.*

11. Following the suspension of Plaintiffs' tariff schedules, the Commission held a hearing at Decatur, Illinois, on April 23–25, 1940, in *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois, and Ex Parte No. 104, Part II, Terminal Services, A. E. Staley Manufacturing Company, Terminal Allowance.*

On May 6, 1941, the Commission made its report in the two cases cited in the preceding paragraph, and entered an order on May 6, 1941, in the proceeding known as *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois.*

12. The Commission, in its report of May 6, 1941, made the following finding:

> Considerable evidence was introduced showing spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant at the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith.

13. The Interstate Commerce Commission, notwithstanding these findings, and notwithstanding the fact that five years had elapsed since the date of the Commission's first report dealing with terminal services at the plant of the A. E. Staley Manufacturing Company, had made no investigation of the spotting practices at other plants, nor has it since May 6, 1941, done so.

14. The Commission's order of May 6, 1941, required the plaintiffs to cancel on or before June 20, 1941, the tariff schedules that they filed on November 10, 1939, under which they proposed to cancel the spotting charge of $2.50 then being collected from the A. E. Staley Manufacturing Company, for the placement of cars for loading and unloading at points within the plant of the A. W. Staley Manufacturing Company and defining the services

as being included in the freight rates. The Commission's order was complied with by the plaintiffs.

15. Plaintiffs have not been required or directed by the Interstate Commerce Commission to make a charge for the services they perform in placing cars at points of loading and unloading within plant areas at Decatur or elsewhere, except in the case of the charge they have been required to continue against the A. E. Staley Manufacturing Company under the Commission's order of May 6, 1941. Plaintiffs have not been required or directed by the Interstate Commerce Commission to make such a charge against any competitor of the Staley Company served or reached by them.

16. The Commission has not set forth in its report of May 6, 1941, in *Investigation and Suspension Docket 4736, Switching Charges at Decatur,* any facts that show what the services are that these plaintiff's render shipper generally in the receipt and delivery of cars on team tracks or industrial sidings and spurs. The Commission has not set forth in its report of May 6, 1941, any facts that show that, if the plaintiffs were permitted to place cars at points of loading and unloading within the plant of the A. E. Staley Manufacturing Company without the assessment of a charge over and above the line-haul rates, the A. E. Staley Manufacturing Company would receive a preferential service not accorded to shippers generally.

CONCLUSIONS OF LAW

1. It was arbitrary action on the part of the Interstate Commerce Commission to require the plaintiffs to continue over the years a spotting charge against the A. E. Staley Manufacturing Company, for placing cars within the Staley Company's plant when the Commission had failed and refused to make any investigation respecting the switching services rendered at the plants of the competitors of the Staley Company in the Decatur area and other places, in order to determine whether or not the switching services at the Staley Company's plant were actually in excess of those rendered without a spotting charge at the plants of these competitors of the Staley Company, and whether or not the Staley Company, if no charge were made against it for placing cars within its plant, would receive a preferential service as compared with the switching services rendered at the plants of its competitors.

2. Basic Finding No. 5 and Conclusion No. 3 set forth in the report of the Interstate Commerce Commission of May 6, 1941, upon which the order of May 6, 1941, was predicated, are not supported by the facts more particularly stated in the report, and are without support in the evidence and are contrary to the evidence.

3. The Interstate Commerce Commission failed and refused to apply and enforce the standards laid down in the Interstate Commerce Act that

control its action, and pursuant to which standards the rights of parties before it are to be determined.

4. The order in question is arbitrary, discriminatory, unjust, and inequitable.

5. The plaintiffs are entitled to a decree that the order of May 6, 1941, is null and void, and perpetually enjoining enforcement of the said order.

WALTER C. LINDLEY,
United States District Judge.

CHAS. G. BRIGGLE,
United States District Judge.

EVANS dissents, not from these findings but from the conclusion that plaintiffs are entitled to a decree.

In the District Court of the United States for the Southern Distri of Illinois, Southern Division

CIVIL ACTION No. 243

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINAL DECREE

(July 14, 1943)

On the twenty-sixth day of April 1943, this cause came on for final hearing on the plaintiff's prayer for a permanent injunction, and all parties being present by counsel, the Court, after hearing the evidence and the arguments of counsel and considering the briefs filed, and being fully advised in the premises, finds the facts and the law to be as contained in the findings of fact, conclusions of law, and opinion are made a part of this Final Decree with the same force and effect as if they had been set out in full herein.

Whereupon, it is ordered, adjudged, and decreed as follows:

(1) That the order of the Interstate Commerce Commission entered on May 6, 1941, in the proceeding shown as *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois,* is hereby set aside and annulled.

(2) That the United States of America and the Interstate Commerce Commission, and each of them, and their officers, attorneys, agents, and employes be and they are hereby permanently and forever enjoined from enforcing or in any manner attempting to enforce the said order of May 6, 1941.

(3) That the United States of America and the Interstate Commerce Commission, and each of them, and their officers, attorneys, agents, and employees be and they are hereby permanently and forever enjoined from interfering with or prohibiting the posting, and filing, and the establishment of the tariff schedules filed by the plaintiff to become effective on December 15, 1939, which tariff schedules were suspended by the Interstate Commerce Commission's order of November 21, 1939, in *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Illinois,* and which tariff schedules the plaintiffs herein were required to cancel by said order of the Interstate Commerce Commission of May 6, 1941, set aside and annulled by this Decree.

(4) That this Court retains jurisdiction of this cause to enforce the terms of this Decree and to make such further orders herein as may be necessary to enforce said terms.

Dated July 14th, 1943.

WALTER C. LINDLEY,
United States District Judge.

CHAS. G. BRIGGLE,
United States District Judge.

EVANS, Circuit judge, dissenting.

Filed and entered July 14, 1943.

G. W. SCHWANER,
Clerk.

Indorsed: Filed Aug. 26, 1943.

G. W. SCHWANER,
Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, ILLINOIS TERMINAL RAILROAD COMPANY, AND A. E. STALEY MANUFACTURING COMPANY*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the district court (R. 134–139) is reported in 51 F. Supp. 141.

The general report of the Commission appears in 209 I. C. C. 11. The two pertinent supplemental reports appear in 215 I. C. C. 656 and 245 I. C. C. 383 (R. 17–43).

*Staley was permitted to intervene in the court below (R. 8485).

JURISDICTION

The final decree of the district court was entered on July 14, 1943 (R. 143–144). Petition for appeal was filed August 26, 1943 (R. 150), and the appeal was allowed the same day (R. 153). Probable jurisdiction was noted on November 22, 1943 (R. 891). The jurisdiction of this Court is founded upon the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 203, 219, 220 (28 U. S. C. 47a), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (28 U. S. C. 345).

STATUTE INVOLVED

The pertinent provisions of Part I of the Interstate Commerce Act are set forth in Appendix I, *infra*, pp. 83–91.

QUESTIONS PRESENTED

The ultimate question is as to the validity of an order of the Interstate Commerce Commission that appellee railroads must cancel their tariff supplements by which the carriers proposed the elimination of charges for spotting[1] performed at an industrial plant. The Commission had concluded that transportation under appellees' line-haul rates ended with delivery of the cars on the interchange tracks and that performance of the spotting without additional charge would violate Sec-

[1] "Spotting" means the placing of freight cars at the doors of factories, or on the spot where they are needed (R. 44).

tion 6 (7) of Part I of the Interstate Commerce Act.

Subordinate questions are:

1. Whether the Commission's order was authorized by the Interstate Commerce Act.

2. Whether the district court erred in holding that the Commission's findings and order were unsupported by substantial evidence, and in basing its decision thereon upon a partial record.

3. Whether the district court could decide questions of fact, including questions of discrimination and preference, or could substitute its judgment for that of the Commission on administrative questions, where such questions were not decided by the Commission.

4. Whether the Commission's order was unreasonable or arbitrary.

STATEMENT

This is a direct appeal by the United States and the Interstate Commerce Commission from a final decree of the United States District Court for the Southern District of Illinois, sitting as a specially constituted three-judge court, Circuit Judge Evans dissenting, permanently enjoining and setting aside an order of the Commission entered in *A. E. Staley Manufacturing Company Terminal Allowance*, 245 I. C. C. 383.

Appellees are three of five rail carriers operating to and from the City of Decatur, Illinois, all of which provide a line-haul service to the industrial

plant of the Staley Company located in the shipping district of that city (R. 20–21).

The order in question was entered on further hearing of issues included in the report of the Commission appearing in 215 I. C. C. 656, under the same title and which was the fifty-fifth supplemental report issued by the Commission following its main report, 209 I. C. C. 11, in *Ex Parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services* (hereinafter called *Ex Parte 104*), a proceeding instituted by the Commission in 1931 for purposes generally indicated by its title. Part II thereof related to the practices of the carriers in respect of the spotting of cars at the sites of industries served by them. Since numerous of the Commission's supplemental reports issued in *Ex Parte 104* have been before this Court,[2] it is unnecessary to describe the proceedings further than to say that, while they covered the service of spotting in its various forms, including its customary form of direct spotting of cars on ship-

[2] The reports and orders have been in all cases sustained as valid. *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *Goodman Lumber Co.* v. *United States*, unreported opinion (E. D. Wis.), and *A. O. Smith Corp.* v. *United States*, unreported opinion (E. D. Wis.), both affirmed *per curiam*, 301 U. S. 669; see also *Inland Steel Co.* v. *United States* and *Chicago By-Product Coke Co.* v. *United States*, 306 U. S. 153.

pers' side tracks and spurs,[3] nevertheless, the investigation was chiefly concerned with the carriers' practices in the matter of performing, or assuming the obligation to perform, spotting at the larger industrial plants having complicated track lay-outs and many needs for such track in addition to the spotting work; that the service of spotting includes both the placement of in-bound cars at unloading points and the taking of out-bound cars from loading points, within the plant property; and that, at the larger plants the performing of such service, whether in-bound or out-bound, generally involves an additional placement of the cars on the interchange or "hold" tracks, and frequently further intermediate placements as well.

Also of general importance to this case are the facts, appearing in the Commission's main report, that the investigation showed that in most sections of the country (and subject to the qualification that there was no real uniformity of carrier practice in the matter)[4] it was the practice of the carriers, in serving the large industrial plants equipped with plant railways, not only to perform without charge the spotting themselves

[3] *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 409, 410.

[4] The practice of performing spotting without charge (or, more usually, paying an allowance) is more nearly uniform in the case of iron and steel plants. *United States* v. *American Sheet & Tin Plate Co.*, 310 U. S. at 410. In fact, it appears that it was attempted to confine the practice to such plants even quite recently. 209 I. C. C. 11, Appendix, p. 47.

when that was desired, but also and much more frequently to pay to the industries in lieu thereof allowances for performing the spotting with their own locomotives; that this latter practice had started in the eastern industrial regions where the industries frequently found it more desirable to perform the spotting with their own engines rather than to accord access to their plants to railroad locomotives, and where the carriers also found, at least to the extent that spotting at the plants was their obligation, that it was generally cheaper for them to pay allowances than to assign locomotives to the plants for such work; that shortly after the first world war such practice by the carriers of paying spotting allowances to industrial plants equipped with plant railways increased extensively in the regions where it was initiated and thereafter spread rapidly and extensively to other regions and sections of the country until at the time the first reports in the investigation were written the only sections not reached were New England, the Southeast and the extreme Southwest (209 I. C. C. 11, 33, 34); that in the latter sections of the country, however, the carriers altogether refused to pay spotting allowances, the New England carriers taking the position that such allowances were improper and the Southern carriers taking much the same position but predicated apparently on the view that spotting allowances in lieu of the work being done by railroad locomotives would only be desired by

an industry after it had reached such growth and consequent frequent need for spotting service as would at the same time terminate their obligation to perform the actual spotting (209 I. C. C. 11, 34).

While the Commission, in so referring in its main report to the position taken by the New England and Southern carriers, showed strong general approval of their views, this, it makes plain, is not meant to indicate that it considered the different practice in other parts of the country as unlawful except where the carriers, by undertaking to pay spotting allowances to such plants, may have assumed to perform or pay for a service in excess of their line-haul obligation. With reference to the question as to the carriers' obligation to spot cars within the yards and over the tracks of large industrial plants, the report emphasizes the necessity for recognizing that a line of demarcation exists between the services included in the transportation and those included in the industrial operations, and it states that the position and testimony of the Southern carriers "shows that this line should be drawn at the point where the carrier is prevented from performing at its ordinary operating convenience any further service, by the nature, desires, or disabilities of a plan" (209 I. C. C. at p. 34).

Once it is realized that so far as large industrial plants are concerned,[5] there is a point beyond which the railroads' obligation to render services does not extend (*i. e.*, a point where "transportation" (sec. 1 (3) (a)) ends, the reason for the Commission's recital of the rapid extension and spread of the practice of paying spotting allowances to such plants is apparent. While to the extent that the carriers were under *obligation* to perform the spotting, they were doubtless fully entitled to pay the allowances instead of doing the work with their own locomotives, nevertheless, as shown in the report's discussion of allowances (see particularly 209 I. C. C. 11, 27), where it is a matter simply of paying allowances, the question of a common carrier's obligation to perform spotting under the conditions existing at particular plants is a consideration much more remote than when the carriers are undertaking the actual work. Accordingly, the rapid extension and spreading of the practice of granting spotting allowances to industrial plants equipped with plant railways

[5] It should be kept in mind that the very fact that the allowances paid to the industries were for spotting cars presupposes that they were equipped with plant railways, and that this factor while still leaving much room for investigation, nevertheless, itself, distinguishes such spotting from the spotting by the carriers of cars on sidetracks and spurs. *Los Angeles Switching Case*, 234 U. S. 294, 307, 310; *Chicago & Alton Ry. v. United States*, 156 Fed. 558, 562, affirmed, 212 U. S. 563; *N. Y. Central & H. R. R. Co.* v. *General Electric Co.*, 219 N. Y. 227, 114 N. E. 115, certiorari denied, 243 U. S. 636.

(plants of the kind where the spotting of cars as an obligation of the railroads is always at best a matter of doubt), furnished considerable ground for the belief that the allowances being paid to those industries were in many instances beyond any obligation of the railroads as common carriers under their line-haul rates. And in the investigation undertaken by the Commission in 1931, which included proceedings with respect to numerous individual plants, it proved to be the case that a large proportion of the allowances being paid the plants were mere gratuities, or unlawful refunds from the rates, for the reason, as found by the Commission, that under the conditions attending the spotting of cars at the plants involved, the spotting was not a carrier obligation included in the railroads' line-haul rates but was "plant service" and, therefore, was work properly done by the industries for themselves and not entitling them to allowances out of the rates.

As explained in the main report (209 I. C. C. 11, 17),[6] under railroad tariff practice in this country, the rates on carload traffic named to or from any city or town, apply to a so-called "switching [or terminal] district" and entitle the industries within such district to have their traffic delivered directly to and taken from the

[6] See also *N. Y. Central & H. R. R. Co.* v. *General Electric Co.*, 219 N. Y. 227, 114 N. E. 115, certiorari denied, 243 U. S. 636.

site of the industry. By this method of delivery and employment of private tracks, the railroads are saved the expense of acquiring and maintaining larger terminals, and it has accordingly been considered that such deliveries were no more than the equivalent of the "team track"[7] delivery accorded to shippers generally under the line-haul rates.[8] And, so far as concerns those industries whose requirements are met by deliveries on spurs and side tracks, it is doubtless true that the service to which they are entitled under the line-haul rates contemplates the spotting of the cars at points convenient for unloading and loading. But in cases of the larger industries with their plant railways, the problem of what constitutes delivery

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[7] Team tracks are ordinary sidings at way stations or in the railroads' yards for unloading and loading freight cars.

[8] In its order involved in the *Los Angeles Switching Case*, 234 U. S. 294, the Commission confirmed what had, with few exceptions, been the railroads' practice throughout the country, namely, according direct deliveries to the industries under the line-haul rate, that is, without extra charge. The Court, in sustaining the Commission, refers to such delivery as a substitute for that included in the rate (*e. g.*, "team track" delivery) and not used (p. 308). Thus, it is apparent that the Court is referring to the fact that the cars are not first taken to team tracks, spurs, etc., but are segregated at break-up yards and then taken directly to the industrial plants. The Court also confirmed the Commission's finding that the deliveries involve no greater expense than team-track delivery (p. 308). The opinion distinguished such deliveries on side tracks and spurs from deliveries such as here, *i. e.*, over "interior switching tracks constructed as plant facilities" (pp. 310, 307).

is obviously different, which fact has been recognized by the courts and the Commission from the early days of regulation. In its general investigation involved here, the Commission found that cars brought by the railroads to such industries practically always come to rest on interchange or "hold" tracks, and the question as to whether the service beyond, namely, the spotting of cars at unloading and loading points, is required or contemplated to complete delivery under the line-haul rates was the question posed by the Commission in its main report (209 I. C. C. 11) and dealt with in its supplemental reports respecting the individual industries investigated.

Generally typical of the Commission's conclusions in supplemental reports where it concluded that the spotting of cars at a plant was not a railroad obligation included in the line-haul rates, are its ultimate findings in its supplemental report in *Allegheny Steel Co. Terminal Allowance,* 209 I. C. C. 273, 276,[9] They read:

> We find that the existing line-haul rates of the Pennsylvania Railroad must be construed as framed to cover the delivery and receipt of shipments at a reasonably convenient point; that the interchange tracks described of record constitute such a reasonable point; that the transportation services which it is the duty of the carrier to perform for the steel company begin and

[9] This was one of the reports involved in *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

> end at the interchange tracks; and that the switching movements by the steel company between such interchange tracks and points within its plant are plant services which it is not the duty of the respondent carrier to perform under its line-haul rates.
>
> We further find that by the payment of an allowance for the service performed on interstate shipments beyond the interchange tracks described of record, the respondent carrier provides a means by which the industry enjoys a preferential service not accorded to shippers generally, and refunds or remits a portion of the rates or charges collected or received as compensation for the transportation of property, in violation of section 6 (7) of the act.

The violation of section 6 (7) declared by the above necessarily followed from the Commission's administrative conclusion that transportation under the line-haul rates ended on the interchange tracks. With that conclusion reached, it followed that there had been a "departure from * * * rates of the published tariffs" (*Merchants Warehouse Co.* v. *United States,* 283 U. S. 501, 511)" which, whether a departure in the form of a money rebate or in the form of special service not included under the rate, constitutes action forbidden by, and violative of, Section 6 (7) of the Act. In the above case (involving a spotting allowance), it followed from the Commission's conclusion that transportation ended on the interchange tracks that the purported allowance

made to the shipper was a forbidden refund, or rebate, from the published rate in violation of section 6 (7) of the Act. The result, however, of the giving of such rebate, particularly in the form of a purported spotting allowance, was, as stated by the report (209 I. C. C. at p. 276), to provide the means whereby the favored shipper enjoyed a preferential service not accorded to shippers generally under the rates.

As distinguished from the supplemental reports, such as the *Allegheny Steel* one, *supra*, the Commission's main report (209 I. C. C. 11) was not accompanied by an order. The report, however, announced the general principles as to operating circumstances and conditions within a plant to be applied in determining whether reasonable delivery, or receipt, of cars under the line-haul rate covers spotting service within the plant. The standard laid down is what has long been termed the "equivalent of team track, or simple switching delivery," but it should be noted that the Commission defines or specifies service that is to be regarded as in excess thereof. The text of this part of the report is as follows (209 I. C. C. at pp. 44–45):

> When a carrier is prevented at its ordinary operating convenience from reaching points of loading or unloading within a plant, without interruption or interference by the desires of an industry or the disabilities of its plant, such as the manner in

> which the industrial operations are conducted, the arrangement or condition of its tracks, weighing service, or similar circumstances, as set forth more specifically in rules 8, 9 and 10 of the appendix, the service beyond the point of interruption or interference is in excess of that performed in simple switching or team-track delivery. * * *

Included among the supplemental reports issued by the Commission following its main report was the report in *A. E. Staley Mfg. Co. Terminal Allowance,* 215 I. C. C. 656, this being the original report involved in the present case. It is there shown that the Staley Company, located at Decatur, Illinois, dealt extensively in grain of various kinds and manufactured grain products principally from corn; that the western section of its plant was composed of about 40 buildings, used for manufacturing and refining, and two large elevators; that these buildings and elevators were served by numerous tracks and spurs extending throughout that portion the plant, which converged and extended eastward for a distance of about 0.75 of a mile, making connection there with a large yard (known as the Burwell yard) containing about 15 tracks; that contiguous to this yard there was another group of buildings and large elevator; that the plant trackage including that in the yard aggregated about 20 miles; and that at the time of the hearing the Staley Company was receiving about 3,000 loaded cars monthly, consist-

ing mostly of grain, and was shipping monthly about 1,000 cars of manufactured products.

The report (215 I. C. C. 656) further shows that the Staley plant was served by five railroads (the Wabash, the Baltimore and Ohio, the Pennsylvania, the Illinois Central, and the Illinois Terminal Company); that all of the railroads used the Burwell yard tracks for interchange except the B. & O., which interchanged traffic near the main or western section of the plant; that the Pennsylvania, Illinois Central, and Illinois Terminal reached the plant and interchange tracks in part over a joint track built by those roads in 1930 and in part over track of the Staley Company built to connect therewith; that of the latter three railroads only the Illinois Central operated over such track, handling the cars of the others along with its own; and that the in-bound cars of all the railroads were placed on interchange tracks and the out-bound cars taken from interchange tracks, the spotting of the cars between such tracks and unloading and loading points within the plant being done by locomotives of the Staley Company and the latter being paid a per-car allowance by the railroads.

Prior to 1922 and when the Staley plant was served by two railroads only, the railroads performed the spotting with railroad locomotives but, because of the confusion created, this practice was abandoned in favor of the practice whereby the

Staley Company performed the spotting and received an allowance (215 I. C. C. 656, 657). Subsequently, the plant was further enlarged and its track extended to secure the service of the three other railroads.

In this first *Staley* report, the Commission stated that the record showed conclusively that the spotting by the two railroads was discontinued because it was unsatisfactory and interfered with the industrial operations; that, following that, the plant was greatly enlarged and could not be served except by "pooled power"; that the Commission had previously held that service which, because of industrial disabilities, had to be performed in this manner was in excess of the equivalent of "team-track delivery" and beyond a carrier's legal obligations; and that (215 I. C. C. at p. 659)—

> The record shows that, even in the event pooled power were used to perform the Staley Company's spotting, the locomotives would of necessity be required to perform such service under the control of the industry and in a manner to meet the industrial requirements. * * *

The Commission next set forth its conclusions in much the same language as in the *Allegheny Steel Co. Case* (209 I. C. C. 273), and its other reports involving spotting allowances and requiring that they be discontinued. The Staley Company filed three petitions with the Commission for reconsideration, based upon proposed or actual change in

the method of switching, the first being denied November 9, 1936, the second June 8, 1937, and the third being granted April 8, 1938, as modified by order of May 4, 1938. Prior to the effective date of the Commission's order as postponed (R. 19), the Staley Company discontinued the use of its own locomotives, and the spotting has since been done by the railroads at published tariff charges (R. 20), for a time through a "pooling" arrangement under which the Wabash did the actual spotting, and later by the Wabash, which performed the spotting for itself and as agent for the others. (R. 20–21.)

The first reopening in response to the Staley Company petition resulted in an incomplete record, and the proceedings were again reopened on the Commission's own motion. About that time, the railroads filed supplements to their tariffs voluntarily proposing the cancellation of the charges for performing the spotting at the Staley plant. The Commission suspended these supplements and consolidated the resulting suspension proceeding for hearing with the hearings in the title proceeding. (R. 21.) The evidence on the further hearings showed that the pool arrangement was discontinued because the Staley Company notified the four railroads other than the Wabash that the convenience of the industry did not require them to deliver Staley traffic at the plant and, since that time, the Staley traffic of those railroads has been interchanged with

and switched by the Wabash between the interchanges and the Staley plant. As stated by the Commission (R. 22):

> The transformation of the Staley plant from an industry directly served by five different railroads to an industry directly served by but one did not increase the transportation cost of the Staley Company, but this was and still is because of the fact that the switching charges of the Wabash for the movement between the several interchanges and Burwell yard are absorbed by the Baltimore & Ohio, the Illinois Central, the Pennsylvania, and the Terminal, as the case may be.

Following some discussion of the additional costs of the four railroads and the advantages resulting to the Wabash, the report discusses the physical changes made in the plant and plant track, *viz.*, the fact that all of the in-bound cars are delivered on the Burwell yard tracks but that, for the most part, the out-bound cars are moved out of the west end of the plant with interchange tracks in the Wabash general yard, or its storage yard. The report thereafter gives in great detail the movements involved in the in-bound and out-bound spotting; it describes the intraplant switching required by the industrial processes and discusses and gives full consideration to the fact that all engine service is supplied by Wabash engines and crews. (R. 29–31, 38.) Its conclusions

seem plainly required by the underlying facts shown and found, and to follow particularly from the size and extent of the Staley operations. The report's conclusions read (R. 43):

> *Conclusions.*—Upon further hearing, we find:
>
> 1. That on cars to and from the Staley Company, the service of transportation of respondents under their line-haul rates and charges is completed by placement of in-bound loaded cars on tracks in the Burwell yard, and begins by removal of out-bound loaded cars from tracks in the Burwell yard when such cars pass through that yard, and by removal of out-bound loaded cars from tracks in the storage yard or general yard of the Wabash when the cars do not pass through the Burwell yard but move out-bound through the west end of the Staley Company's plant.
>
> 2. That all services between the Burwell yard or the storage or general yard of the Wabash and points of loading or unloading within the plant area of the Staley Company are plant services for the Staley Company and not common-carrier services covered by the line-haul rates and charges of respondent carriers.
>
> 3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a) from Burwell yard tracks to points of unloading within the plant area of the Staley Com-

pany (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area to Wabash storage or general yard tracks on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the act.

4. That the existing charge of $2.50 per car for the services described in the immediately preceding finding has not been shown to be unlawful.

* * * * *

6. That the suspended schedules have not been justified.

The lower court, in holding the Commission's order invalid, rested its decision in large part on the ground that the above conclusion 3 was unwarranted because it considered the Commission's finding of fact 5 leading up to it to be unsupported by evidence and that conclusion 3 was in fact disputed by certain evidence showing that competitors of the Staley Company were accorded spotting service under the line-haul rates and without extra charge (R. 136).

The Commission's conclusion 3 in question is to the effect that the performance by the rail-

roads without charge in addition to the line-haul rates of the spotting service at the plant of the Staley Company would result in that company's receiving a preferential service not accorded to shippers generally and would result in the refunding of a portion of the published rates in violation of Section 6 (7) of the Act. In short, the conclusion is to the effect that the performance of the spotting without the extra charge which was being exacted would be a departure from the published tariffs, which is what is forbidden by Section 6 (7), whether accomplished by special service [10] not included under the rates, by money refunds or by whatever means.

The Commission's finding of fact 5 to which the lower court refers and holds to be unsupported by the evidence reads (R. 42–43, 135–136):

> 5. All services between the tracks described in the immediately preceding finding and points of loading and unloading within the plant area of the Staley Company are services in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs.

The above finding has reference to the principles and standard laid down in the Commission's main report (209 I. C. C. 11) in which the standard prescribed of spotting service within a

[10] See *Chicago & Alton R. Co.* v. *Kirby*, 225 U. S. 155.

plant permissible under the line-haul rates was that such service should not exceed the equivalent of simple switching or team track delivery (see p. 13, *supra*). The said finding 5 is, it is evident, the Commission's ultimate finding of fact that the spotting service at the Staley plant is in excess of such standard.[11] And directly supporting such ultimate finding is the Commission's finding of fact 3 (R. 42) which contains the basic finding contemplated by the principles laid down in the main report (209 I. C. C. 11, 44, 45, 47). Finding 3 reads as follows (R. 42):

> 3. The movements between points of loading or unloading within the plant area of the Staley Company and the Burwell yard, the storage yard, or the general yard of the Wabash, for which respondents now make a charge of $2.50 per car, in many cases are not direct but involve one or more ad-

[11] This is manifest from the consideration that what is forbidden by Section 6 (7) is a departure from the published tariffs. Where the departure would be, as here, the performing free for a shipper of service not included in the rates, the showing of that fact alone is enough to constitute the violation, although it would also result that the shipper would enjoy a service in excess of that rendered to shippers generally under the carload rates, namely, to shippers in the receipt and delivery of traffic on team tracks or industrial sidings. Similarly, where the departure consists of the giving of unlawful allowances or rebates to a shipper, the showing of that fact alone is enough to constitute the violation although it is also true that the shipper thus enjoys preferentially lower rates than accorded shippers generally under the rates.

> ditional movements, such as to scales, intermediate storage tracks, or cleaning tracks, and in all instances are, and must be, coordinated with the industrial operations of the Staley Company and conform to its convenience.

All of the interruptions and interferences referred to find ample support in the report's earlier discussion and findings, including the finding (R. 41) that performance of the spotting necessitates a subordination of common carrier attributes to the need for coordination with the industrial processes.

As above noted (*supra*, p. 20) the lower court's holding that the Commission's conclusion 3 was unwarranted also appears to rest on the ground that the said conclusion that the performance of the spotting without extra charge would result in the Staley Company's receiving a preferential service not accorded shippers under the rates generally, is contradicted by the evidence introduced to the effect that certain competing and other plants were accorded spotting service without other charge than the line-haul rates and thus are being unduly preferred contrary to the provisions of Sections 2 and 3 of the Act. Aside from the fact that the Commission did not consider that similarity of conditions was shown between those plants and this, the lower court has apparently overlooked the distinction between the preferential service or other treatment resulting

from the departure from a published tariff (sec. 6 (7)) and the undue preference and unjust discrimination referred to in Sections 2 and 3. Just as the preference to one shipper over others resulting from unlawful refunds or rebates (sec. 6 (7)) cannot be excused on the ground that if he is deprived of them it would result in unduly preferring a competitor who continues to enjoy such refunds, similarly here the according to Staley, free, of a service not included in the rates would be the kind of preferential treatment which cannot be excused on the ground that if it were taken away from it, its competitors still enjoying the free service would be unduly preferred.[12]

The complaint herein was filed in the lower court on June 1, 1942 (R. 1). The Staley Company filed a petition to intervene on August 31, 1942 (R. 85). The action was heard by the court on April 26, 1943, being submitted upon complaint, the intervening petition, and the answers of the United States and the Interstate Commerce Commission (R. 121–122). On June 10, 1943, the court rendered its opinion, Circuit Judge Evans dissenting, holding that the order herein is invalid (R. 134–139), and on the same day entered its findings of fact and conclusions of law (R. 139). Its final decree,

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[12] See *Baltimore & Ohio R. Co.* v. *United States*, 305 U. S. 507, 523, 524; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *Davis* v. *Cornwell*, 264 U. S. 560; *Chicago & Alton R. Co.* v. *Kirby*, 225 U. S. 155, 165.

entered on July 14, 1943, permanently enjoined enforcement of the Commission's order (R. 143–144). Petition of the Commission to stay injunction pending this appeal was filed June 31, 1943 (R. 145),[13] and granted by the lower court order entered July 14, 1943 (R. 149).

SPECIFICATIONS OF ERRORS TO BE URGED

The court below erred:

1. In deciding that the Commission's order is invalid and enjoining enforcement thereof.

2. In deciding that the Commission's conclusion three as to preferential service is unsupported by evidence, although this conclusion was only stating a legal fact and required no evidentiary support, and even if evidentiary support was required, the court erred in deciding the question upon consideration of a partial record, the whole of the record considered by the Commission not having been produced.

3. In deciding factual questions not decided by the Commission, and in deciding, without jurisdiction, questions of unjust discrimination and undue preference under the provisions of Sections 2 and 3 of the Interstate Commerce Act, where the Commission had not decided those questions and there is no order thereon subject to Court review.

4. In deciding that the Commission's action is arbitrary.

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[13] Through a clerical error, the record lists the filing date as July 31, 1943.

SUMMARY OF ARGUMENT

I

The Commission has determined what constitutes complete delivery, or where "transportation" (sec. 1 (3) (a)) begins and ends, with reference to the Staley plant by finding that the transportation services which the carrier appellees are obligated to perform under their line-haul rates, begin and end at the interchange track; that service beyond that point is plant service; and that accordingly carrier performance thereof, without charge in addition to the line-haul rates, would mean that the Staley Company would receive preferential service not accorded shippers generally, and would constitute an unlawful refund of a portion of line-haul rates in violation of Section 6 (7) of Part I of the Interstate Commerce Act. The determination of what constitutes delivery (or where transportation begins and ends) is one of fact for the Commission, to be decided upon evidence disclosing the actual conditions of operation. *Los Angeles Switching Case,* 234 U. S. 294, 311; *Merchants Warehouse Co.* v. *United States,* 283 U. S. 501; *Louisville & Nashville R. Co.* v. *United States,* 282 U. S. 740, 757.

This Court has in recent decisions continued its recognition of the Commission's authority to decide the limitations of line-haul obligations. *Interstate Commerce Commission* v. *Hoboken Man-*

ufacturers' Railroad Co., No. 43, this Term, decided December 6, 1943; cf. *State of California* v. *United States*, Nos. 20 and 22, this Term, decided January 3, 1944; *Federal Power Commission* v. *Hope Natural Gas Co.*, Nos. 34 and 35, this Term, decided January 3, 1944.

The Commission is expressly charged with the administrative responsibility of applying statutory provisions to determine what is or is not a part of the line-haul obligation, and to enforce the legislative prohibition against any variation from published tariffs. Sections 1 (3) (a), 6 (7), 12 (1), and 15 (1) of Part I of the Interstate Commerce Act; see also *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

II

The evidence abundantly establishes all the facts found in the supplemental report (R. 17–43) as to "actual conditions of the operation" (*Los Angeles Switching Case*, 234 U. S. 294, 311) at the Staley plant. It provides a precise description of the plant, the work of carriers in delivering and receiving cars upon the interchange track, the spotting service within the plant, the conditions under which spotting service must be performed because of the nature and requirements of the industrial operation, and the special conditions in the plant, which prevent carrier performance at the carriers' convenience. As to these findings, it appears that there is no serious claim of lack of evidentiary sup-

port. It is only contended that the Commission's finding of fact five (R. 42–43) with reference to preferential service not accorded shippers generally, is unsupported by evidence, and that conclusion three (R. 43) is consequently unwarranted.

The evidence in this case is similar in type and probative effect to that held sufficient to support the orders in *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, and *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156. It is clearly sufficient under the language of the *Los Angeles Switching Case*, 234 U. S. 294, 311, where the rule was stated that questions of this type are "to be determined according to the actual conditions of operation."

The same finding as to "preferential service not accorded to shippers generally" was included in all *Ex Parte 104* supplemental reports, where the service was held to be beyond the line-haul obligation, including those decided in the several cases reaching the courts. That all shippers did not receive the same terminal services, and that some were afforded a preferential service, is clearly shown by findings of fact in the main report in *Ex Parte 104* (209 I. C. C. 11, 33–43), which report is a part of and provides the basis for all the other supplemental reports, including that in this case.

The court below holds that this case cannot be decided, as was done by the Commission, "upon

the circumstances disclosed" (*United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 411) and "evidence respecting the operations" (*ibid.*) at the Staley plant. To reach such a conclusion, the court below has considered questions of preference and discrimination under Sections 2 and 3 of the Act, although the Commission's order is based upon rebates prohibited by Section 6 (7) of the Act, and not upon preference and discrimination. The "preferential service" found by the Commission, is a necessary result of a rebate, since it must ordinarily be assumed that rebates, either direct or disguised, will not be the common practice of carriers. Rebates are commonly extended only to preferred shippers who thereby receive a "preferential service."

The district court's conclusion is based upon the partial record it considered, the whole of the voluminous record considered by the Commission in *Ex Parte 104*, 209 I. C. C. 11, not having been offered in this action. That the record before the court is only a partial record is shown by the certificate by the Commission's Secretary that only "excerpts" of the record in *Ex Parte 104* were included; a copy of this certificate appears in the transcript rather than in the printed record. Although the Commission in the *Ex Parte 104* proceedings considered several hundred industries (209 I. C. C. 11, 43), the court below only had that small part of the record which related to the Staley indus-

try, and the record upon rehearing of the supplemental report therein, which contains evidence, largely the opinion of witnesses, that certain other industrial plants, located in proximity to Staley and many of them its business competitors, receive a similar spotting service without any charge above the line-haul rates. But in the absence of the whole record, the court is limited in its consideration of the evidence to the facts stated in the Commission's report. *Mississippi Valley Barge Co.* v. *United States,* 292 U. S. 282; *Tagg Bros.* v. *United States,* 280 U. S. 420; *Louisville & Nashville R. Co.* v. *United States,* 245 U. S. 463.

III

The lower court erred in deciding factual questions, including questions of unjust discrimination and undue preference, and in substituting its judgment for that of the Commission on administrative questions, or in deciding those questions where they were not decided by the Commission.

Although not passed upon by the Commission, the district court has decided the factual question that the switching situation at the Staley plant is similar to switching situations at the plants of Staley's competitors and others. The Commission did not decide the fact of similarity, for that is not an issue in the question as to what is or is not embraced within the transportation obligation at the Staley plant. As approved by this Court, the Commission has here, as in other cases, decided

the beginning and ending point of transportation upon "evidence respecting the operations at [each] plant." *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 401, 411. The Commission has not considered evidence as to other plants except to say that it did "not satisfactorily show" substantially similar conditions in other plants (R. 137) and that even if there were similarity, that would only indicate need for investigations. The court below evidently considered this collateral and irrelevant evidence sufficient to warrant its decision as to similarity and ignored the principle, as approved by this Court, that each case must be decided upon its own evidence of operations.

Discrimination and preference, prohibited by Sections 2 and 3 of the Act, are questions of fact that can only be decided by comparison of one situation with other similar situations. The lower court also decided these questions, although the Commission had made no such decision. It was an unnecessary decision, since the question considered by the Commission was whether or not spotting within the Staley plant was a part of carrier transportation obligation, authority for the decision of which is really conceded, and whether or not under Section 6 (7) there would be a prohibited rebate, in the form of extra terminal service. Such issues involved no decision in respect to prohibited discrimination under Section 2 and preference under Section 3, and accordingly the Commission made none.

Decisions of fact as to similarity, discrimination and preference are administrative questions to be decided by the Commission, subject to court review. Where there has been no decision by the Commission, there is nothing for the court to review. Where there has been such a decision by the Commission, it may be reviewed within limits fixed by decisions of this Court, which do not include substitution of a court's judgment for that of the Commission on an administrative question. Here, the district court has not only substituted its judgment for that of the Commission, but has decided administrative questions where no decisions thereon were made by the Commission.

IV

It is contended that the Commission, in order to make this order valid, must simultaneously consider and decide the same question, as to other industries in competition with the Staley Company, and must compel carriers to make similar charges for similar services at the other plants if the charges are to be sustained here. The opinion below holds that otherwise a preference and discrimination (secs. 2 and 3) results against Staley. In essence, this will require the Commission in every case involving a variation from published rates in the form of extra service or some other kind of rebate, to investigate all other parties who may receive the same or similar extra service or rebate

and make decisions thereon. No service or practice could be condemned by the Commission until all similar services and practices are considered and condemned.

Seemingly, the lower court has recognized the Commission's authority to decide that the service involved is excessive, beyond the line-haul obligation, and accordingly unlawful, but it in effect holds that the order prohibiting such service cannot be made effective until the Commission has ferreted out all competitors of the Staley Company and decided the same question as to them. Such a rule would lead to an ever increasing line of newly discovered competitors, since every investigation of a new industry would uncover new competitors of that industry. It would also render futile the past decisions of this Court in sustaining similar orders of this kind. To affirm the decision, would be to destroy all practical authority of the Commission to prohibit preferences and discriminations, to force observance of published tariffs without variation, or even to enforce penalty provisions of the statutes. The answer in every case, just as here, would be that the order as to the one found guilty, could not be executed until the cases of all others who may be equally guilty are passed upon.

This action illustrates the extent of interest of industries and some carriers, to retain the opportunity for continued favor to preferred ship-

pers in the form of extra terminal services. The history of rail regulation shows a constant competitive fight between carriers over the business of large shippers. The efforts of Congress, the Commission and the courts have been to remove possibilities for preferment and to assure all shippers the same treatment in rates and service. That is why preference and discrimination are prohibited by the Interstate Commerce Act. That accounts for the provision for publication of rates and the prohibition of any variation therefrom. Long ago, carriers discovered that direct rebates could not be continued as a practice. In later years, disguised rebates or camouflaged preferments have been inaugurated.

Cooperation of the railroads rather than opposition would remove the claimed preference against the Staley Company, of which appellees complain and which the lower court found existed. It surely was not arbitrary for the Commission to delay its action, involving a task of such enormity, in the hope that claimed inequalities might be corrected by the voluntary action of appellees.

ARGUMENT

I

THE COMMISSION'S ORDER WAS AUTHORIZED BY THE INTERSTATE COMMERCE ACT

Acting under Sections 1 (3) (a), 6 (7), 12 (1), and 15 (1) of Part I of the Interstate Commerce Act

(Appendix, *infra*, pp. 83–84, 86–87, 89–90), the Interstate Commerce Commission entered an order requiring appellees, three of the five carriers serving the Staley Company, to cancel their schedules, suspended in Investigation and Suspension Docket No. 4736, under which they had proposed to cancel their tariff spotting charge of $2.50 per car, as had been established by all five carriers. In the report of May 6, 1941 (R. 17–43), it was decided that service at the Staley plant, between the points of interchange and the points of loading and unloading, was plant service, not carrier service under the line-haul obligation, and if carrier-performed, without compensation in addition to line-haul rates, would result in "preferential service not accorded shippers generally" and in rebate of a portion of the line-haul rate.

The Commission recognizes that free carrier performance of a service, which is in fact a part of the transportation obligation under the line-haul rate, is lawful and required. Allowances for such a service, where industry performed, would be justified. However, no additional service may be rendered free, after delivery has been made and transportation has ended or before it has begun. *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501; *N. Y. Central & H. R. R. Co.* v. *General Electric Co.*, 219 N. Y. 227, 114 N. E. 115, 117, certiorari denied, 243 U. S. 636.

The Commission has determined what constitutes complete delivery or where "transportation" (sec. 1 (3) (a)) begins and ends with reference to the industrial plant of the Staley Company, by finding that the transportation services which the carrier appellees are obligated to perform under their line-haul rates begin and end at the interchange track; that service beyond that point is plant service; and that accordingly carrier performance thereof, without charge in addition to the line-haul rates, would mean that the Staley Company would receive preferential service not accorded shippers generally, and would constitute an unlawful refund of a portion of line-haul rates in violation of Section 6 (7) of Part I of the Interstate Commerce Act.

The determination of what constitutes delivery (or where transportation begins and ends) is one of fact for the Commission, to be decided upon evidence disclosing "the actual conditions of operation." *Los Angeles Switching Case,* 234 U. S. 294, 311; *Atchison Ry.* v. *United States,* 295 U. S. 193, 201; *Merchants Warehouse Co.* v. *United States,* 283 U. S. 501; *Standard Oil Co.* v. *United States,* 283 U. S. 235, 240; *Louisville & Nashville R. Co.* v. *United States,* 282 U. S. 740, 757. Appellees may well concede that the Commission possesses fundamental authority to decide where

transportation begins and ends, and may not question the validity of the supplemental orders, entered in the *Ex Parte 104* proceedings (209 I. C. C. 11), as approved by this Court. *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156; *Goodman Lumber Co.* v. *United States*, unreported opinion (E. D. Wis.), and *A. O. Smith Corp.* v. *United States*, unreported opinion (E. D. Wis.), both affirmed *per curiam*, 301 U. S. 669.[14]

This Court has in recent decisions continued its recognition of the Commission's authority to decide the limits of line-haul obligations. In *Interstate Commerce Commission* v. *Hoboken Manufacturers' Railroad Co.*, No. 43, this Term, decided

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[14] In addition to these cases decided by this Court upon appeal, the following cases were decided in the Commission's favor by statutory district courts without appeal: *Louisville Cement Co.* v. *United States*, 19 F. Supp. 910 (W. D. Ky.); *Louisiana Development Co.* v. *United States*, 18 F. Supp. 629 (E. D. La.); *Elgin, Joliet & Eastern Ry. Co.* v. *United States*, and *East Chicago Dock Terminal Co.* v. *United States*, 18 F. Supp. 19 (N. D. Ind.); *Koppers Gas & Coke Co.* v. *United States*, 11 F. Supp. 467 (D. Minn.); *Sheffield Steel Corp.* v. *United States*, and *Kansas City Light & Power Co.*, Equity Nos. 2735, 2758, where two such supplemental reports were sustained by the United States District Court for the Western District of Missouri on May 10, 1937, in an unreported opinion; *Hanna Furnace Corp.* v. *United States et al.*, Civil No. 1408, another supplemental report sustained by the United States District Court for the Western District of New York, in an opinion not yet reported, decided December 6, 1943.

December 6, 1943, the Commission's order holding that the transportation involved began and ended at Seatrain cradles and that service beyond that point was not a part of the line-haul obligation, was sustained. The Court held the findings of the Commission to be decisive (pamphlet p. 7):

> We are of opinion that these findings are decisive of this appeal. The Commission's determination of the point in time and space at which a carrier's transportation service begins or ends is an administrative finding which, if supported by evidence, is conclusive on the courts. *Los Angeles Switching Case,* 234 U. S. 294, 311–14; *United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402, 408; *United States* v. *Pan American Petroleum Corp.,* 304 U. S. 156, 158; *Baltimore & Ohio R. R. Co.* v. *United States,* 305 U. S. 507, 525–6; *Swift & Co.* v. *United States,* 316 U. S. 216, 222–5, and cases cited. In the *Tin Plate* and *Pan American* cases this Court sustained the Commission's order prohibiting, as in violation of § 6 (7) of the Act, payment of allowances to an industry by rail carriers for spotting cars on its industrial tracks. The Court accepted as controlling the Commission's findings that under prevailing conditions and practice the interchange tracks of the industry were convenient and usual points for the receipt and delivery of the interchanged cars, that the rail line-haul service accordingly ended there and that for that reason the industry

> performed no service in spotting cars on its own tracks for which the rail carrier was compensated under its line-haul tariffs * * *.

The procedure and method here adopted by the Commission to administer and enforce regulations enacted by Congress is common to agency administration. The Commission is charged with the administrative responsibility of applying statutory provisions to determine what is or is not a part of the line-haul obligation, and to enforce the legislative prohibition against any variation from published tariffs. Sections 1 (3) (a), 6 (7), 12 (1), and 15 (1) of Part I of the Interstate Commerce Act. The tools fashioned by the Commission in *Ex Parte 104,* 209 I. C. C. 11, have been used here in one of the many situations discovered to correct a wrong that was found to exist. This Court had recently recognized the necessity for such authority in *State of California* v. *United States,* Nos. 20 and 22, this Term, decided January 3, 1944, pamphlet pp. 4, 6, and *Federal Power Commission* v. *Hope Natural Gas Co.,* Nos. 34 and 35, this Term, decided January 3, 1944, pamphlet p. 19.

Appellees may attempt to distinguish cases previously decided on the ground that free carrier spotting differs from allowances to the industries for performing their own spotting, as involved in the other cases. The basis of allowances is industry performance of a service which could not be

performed free by the carriers. In *Merchants Warehouse Co.* v. *United States,* 283 U. S. 501, 510, it was held that the service performed by the warehouse was one that the carriers would not be authorized or permitted to perform, even at their own stations, and if performed by them would nullify published rates for carload shipments. The same rule would not permit or authorize carriers to perform the service for which industries were paid allowances. Clearly, it was the service involved and not the payment of allowances which controlled.

At the time of the Commission's decision in the first Staley supplemental report (215 I. C. C. 656), that company (as in *United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402, and other cases) performed its own spotting service for which it was paid allowances. The first Staley petition for reconsideration was based upon its proposal to substitute free carrier service for its own (R. 20). That substitution was made, and later carriers filed tariff charges for the service (R. 21). Practically, the contention here is that the railroads should perform free of charge the same service, which when performed by Staley was condemned as an allowance.

The opinion in the *American Sheet & Tin Plate* case, *supra,* makes it clear that it is the service, held as not within the line-haul obligation, and not merely the question of allowances paid, that

determined the issues involved. Allowances are recognized by the Commission and the Court as authorized and lawful where industry performs a service which carriers are bound to perform under their line-haul obligation. Allowances are properly recognized as one of various disguises under which rebates are attempted. Free performance by carriers of a service not included in the line-haul obligation is equally recognizable as a disguise for rebates.

In two cases reaching the courts, one decided by this Court and the other by a statutory court, the Commission's orders to cease service performed by carriers and held not a part of the line-haul obligation, were sustained. The *Weirton Steel Company Terminal Allowance* case, 209 I. C. C. 445, was one of six cases consolidated and decided upon appeal in *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402. This Court there saw no difference in principle between free carrier performance of the service and performance by industry under allowances, for the *Weirton* case, with its free carrier service, was treated exactly like the other five cases with service by industry and allowances therefor. The Commission's report and order in the *Weirton* case (the 15th supplemental report under *Ex parte 104*) found, just as was later found in the (Staley) 55th supplemental report upon rehearing (R. 17), that the service was a plant service for which line-haul rates did not com-

pensate, that free carrier service or an allowance for industrl performance would result in a preferential service not accorded shippers to generally, and would refund or remit a portion of the line-haul charges in violation of Section 6 (7) of the Act (see 209 I. C. C. at p. 448). The order accordingly prohibited free carrier service or allowances for industry performance thereof.

The other case, *Inland Steel Co.* v. *United States,* 23 F. Supp. 291 (N. D. Ill.), involved seven actions (consolidated and decided in the one opinion) brought by industries seeking to set aside and enjoin orders of the Commission, also issued under supplemental reports in the *Ex parte 104* proceedings. One of the appellants was Crane Company of Chicago, whose case had been decided by the Commission as the 34th supplemental report. The Commission's conclusions in that case were (210 I. C. C. 210, 212):

> We find that the service performed beyond the interchange tracks in the southwest corner of the plant, described of record, is an industrial service which respondents are not obligated to perform and for which they were not compensated under their line-haul rates; that performance of said service by respondents without reasonable charge therefor results in the industry's receiving a preferential service not accorded to shippers generally; and that the performance of said service by the respond-

ent carriers results in a violation of section 6 of the act.

An appropriate order will be entered.

The Commission's conclusions in the *Crane* case as to "preferential service not accorded to shippers generally" resulting in a violation of Section 6 (7) of the Act, were the same as in the present case. The statutory court approved the Commission's order. Crane & Company did not appeal, and since the court's decision that company has been subject to a charge for spotting service if the service is performed by carriers.

The basis for the district court's opinion in the instant case is that discrimination and preference against the Staley Company result from the Commission's order. Yet, the same type of discrimination and preference results from the Commission's order in the *Crane* case. Actually, to relieve Staley of this claimed discrimination, as the court below did, would amount to judicial discrimination against the Crane Company. It can hardly be gainsaid, that if Staley is entitled to free spotting service because its competitors have not been subjected to the same charge by orders of the Commission, by the same standard Crane is entitled to free spotting service since its competitors have not been subjected to a similar charge. And it should be noted that Judge Lindley who wrote the opinion covering Crane & Company in the *Inland Steel* case joined in the majority

opinion (Circuit Judge Evans dissenting) in the present case.

II

THE COMMISSION'S ORDER IS SUPPORTED BY SUBSTANTIAL EVIDENCE

As shown in the Statement (*supra*, p. 14), spotting at the Staley plant is a complicated service and is coordinated with plant operations. It is a situation in which carriers cannot, at their own convenience, perform the switching. It requires assignment of engines and crews, operating regularly and doing no other work. Just as approved by this Court in other supplemental orders, "the Commission found, upon sufficient evidence, that the cars were, in the first instance, placed upon lead tracks, interchange tracks or sidings and subsequently spotted from these tracks; in each instance the spotting service involved one or more operations in addition to the placing of the car on interchange tracks, such as moving it to plant scales for weighing, or some additional burden, such as conformance to the convenience of the plant, supply of special motive power required by the plant's layout or trackage or some other element which called for some excessive service greater than that involved in team track spotting or spotting on an ordinary industrial siding or spur." *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 411. The

Court there concluded (*ibid.*) that this type of evidence supported the findings and order there involved.

The same type of evidence supports this *Ex Parte 104* supplemental report and order. The report recites in detail changes made in the effort to escape results of the previous order condemning allowances. A full description is afforded of the plant with its interchange tracks, numerous points of loading and unloading, intricate system of interlacing plant tracks and spurs, the many instances of two or more movements of cars, and the manner in which spotting to and from the plant is accomplished by the use of engines and crews regularly and exclusively assigned to that work, frequently involving free storage of cars in Wabash yards, and generally accommodating carrier service to the needs of the industry. The evidence clearly reveals how large-volume freight can cause carriers to make changes, at great and continuing expense, to conform to an industry's plan and operation and how some carriers thereby obtain by competitive advantage a greater than fair share of line-haul freight.

The complaint (R. 12) alleges that the Commission's finding that the Burwell yard, the interchange track, may not properly be treated as a Wabash yard, is unsupported by evidence. That merely expresses a different interpretation on the part of appellees as to what the evidence shows the Burwell yard to be. Under the evidence, the

Commission found the yard to be the same interchange track as formerly (R. 28). It is not denied that the Burwell yard was originally constructed and used by the Staley Company as an interchange track; that under the condemned allowance practice, all traffic, except that of the Baltimore and Ohio Railroad, was switched by carriers to tracks in the yard and from there spotted by Staley engines; that the yard continued as the interchange point after substitution of carrier for industry spotting, until June 1, 1938, when it was leased to the Wabash Railroad Company for 10 years, for a consideration of $1.00 and an agreement to pay taxes and maintain tracks; and that it was thereafter used by the Wabash as the point to which in-bound traffic was first switched, and from there spotted within the plant. It is not denied that the yard was used almost entirely in connection with Staley traffic, that Wabash rarely used the yard for other operations, or that Wabash, under the changed arrangement, incurred considerable expense to build necessary track connections to make the yard usable for Staley traffic. Appellees contend that the lease of yard and the change of name of its management in fact changed its character from a Staley interchange track to a Wabash yard. Nevertheless, regardless of nomenclature, it remained the same interchange track. Obviously, the lease to Wabash was but another of the several changes made, by cooperative effort of this industry and these car-

riers, to avoid the Commission's previous decision that spotting service within the plant is not a part of a carrier's line-haul obligation. Appellees seem to lose sight of the fact that it is the plant situation which determines the character of service, and that interchange tracks are not the controlling factors. Certainly the service could be, because of other facts, beyond the line-haul obligation, even where there is no named interchange track. The question is whether or not points of loading and unloading within the plant can be reached in one switching movement without obstacles or interference by plant operations. Moreover, the opinion of the court below considered as inconsequential the allegations of the complaint in respect to lack of evidentiary support for findings as to conditions of operation at the plant, since that feature of the complaint is ignored.

Except as to the Burwell yard, appellees accept, as supported by evidence, all the other findings of the Commission as to actual conditions and operations. The complaint and the opinion below are not concerned with "the circumstances disclosed," *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 411, and the "evidence respecting the operations at the plant" (*ibid.*) of the Staley Company. They are instead interested in a comparison of these operations with the situations at other industrial plants, particularly those which are in competition with the Staley Company.

The lower court only held that evidence is lacking to support the finding of fact five (R. 42–43) and therefore conclusion three (R. 43) as to "preferential service not accorded to shippers generally."

A. CONCLUSION OF LAW THREE IS ONLY A STATEMENT OF A LEGAL FACT AND REQUIRES NO EVIDENTIARY SUPPORT

The court below concluded that it is necessary to find under Section 3 whether the spotting service is in fact preferential to Staley as compared to competitors of that company. Under the Act, preference is not a required finding, as a part of a decision fixing limits of transportation. That decision is to be based upon evidence of conditions of operation at each plant. *Los Angeles Switching Case,* 234 U. S. 294, 311. The Commission's decision here, as in all *Ex Parte 104* supplemental reports, is not based upon a comparison of conditions at the Staley plant with the conditions at other plants, but solely upon what the evidence shows of the actual situation at the Staley plant. The "preferential service" found here by the Commission and included in finding of fact five and conclusion three, which the court finds are unsupported by evidence (R. 139), is simply a statement that such "preference" necessarily flows from every violation of Section 6 (7) of the Act.

The Commission found in its main *Ex Parte 104* report (209 I. C. C. 11, 45) that free service

beyond the point where transportation begins and ends, or payments of allowances therefor when performed by the industries themselves "provides the means by which the industry enjoys a preferential service not accorded to shippers generally." That is of course not a finding of preference under Section 3, but is only stating the legal fact that preference necessarily results from any and all departures from established tariffs. If facts show a rebate in the form of terminal services, not compensated for by line-haul rates, it is "preferential service" as a matter of law. That is correct whether there is any evidence to show the fact of preference, or whether all shippers included under the evidence are shown to receive service without compensation. Under Section 6 (7) of the Act, free service to all shippers is prohibited. All variation from established rates is a "preferential service", without reference to whether or not the same variation is made for any or all shippers.

Unlike the court below, this Court does not regard "preferential service not accorded shippers generally", the Commission's conclusion in question, to mean "discrimination" under Section 2 and "preference" under Section 3, which if found, would obviously require evidentiary support. In *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, the issue was lawfulness of allowances and free spotting service, as paid

or rendered to those industries, covering the terminal services involved. The first question raised (301 U. S. at p. 406) by appelles in their opposition to those orders, was that necessary quasi-judicial findings had not been made, since the Commission had held that the allowances furnished a means by which an industry enjoyed a preferential service, not accorded shippers generally, and constituted a rebate in violation of Section 6 (7) of the Act. It was insisted that such conclusions were not sufficient to support the order because the Commission must find under Sections 2, 3, and 15 (1) of the Act, that the practice was unreasonable, unjustly preferential, unduly discriminatory, or otherwise unlawful.[15] Appellees

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[15] The Court disposed of these issues as follows (301 U. S. at pp. 406–407):

> If the findings were limited to the practices specified in the sections mentioned the position of the appellees would no doubt be sound, but the Commission has, in each case, found that the interchange tracks of the respective industries are reasonably convenient points for the receipt and delivery of interstate shipments and that the industry performs no service beyond those points of interchange for which the carrier is compensated under its interstate line-haul rates. These findings are an adjudication by the Commission that the spotting service within the appellees' plants is not transportation service which the carriers are bound to render in respect of receipt and delivery of freight. The statute contains this definition: "The term 'transportation' shall include * * * all services in connection with the receipt, delivery, elevation, and transfer in transit * * * of property transported." The Interstate Commerce

there claimed that under Section 6 (7) the allowances involved were permissible if provided for by tariffs and that they did not constitute unlawful rebates. The question as to "preferential service not accorded to shippers generally" was not there considered by appellees or the Court to be a finding of unjust discrimination and undue preference under Sections 2 and 3. The "preferential service" there is precisely the same finding as here and rests upon the legal fact that the practice is a violation of Section 6 (7). The finding as to "preferential service" is not one which would require evidentiary support since the preferential service referred to by the Commission is only that which necessarily flows from the violation of Section 6 (7).

It is evident that the lower court erroneously regarded this conclusion three (R. 43) to be the same as "unjust discrimination" and "undue preference" prohibited by Sections 2 and 3. But in both *American Sheet & Tin Plate Co.* v. *United States,* 15 F. Supp. 717 (W. D. Pa.) and *Pan-American Petroleum Corporation* v. *United*

Commission is authorized and required to enforce the provisions of the Act and, after hearing, if it be of opinion that any regulation or practice of a carrier be unjust or unreasonable, or unjustly discriminatory, "or otherwise in violation of the provisions of this act," to determine what practice is or will be just, fair and reasonable to be thereafter followed and to made an order that the carrier cease and desist from violation to the extent that the Commission finds violation does or will exist.

States, 18 F. Supp. 624 (E. D. La., S. D. Tex.), the lower courts were reversed (301 U. S. 402; 304 U. S. 156) for holding that the Commission was limited by its statutory authority as to practices involved in terminal services, to the question whether or not such services or practices were, under other Sections of the Act, unreasonable, unjust and preferential, unduly discriminatory, or otherwise unlawful.

This Court has clearly held that no quasi-judicial findings of unjust discrimination or undue preference are necessary to the validity of an order fixing the bounds of terminal services, where, as here, the Commission based its order upon other Sections of the Act. *United States* v. *Pan American Petroleum Corp.,* 304 U. S. 156; *United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402; *Goodman Lumber Co.* v. *United States,* 301 U. S. 669; *A. O. Smith Corp.* v. *United States,* 301 U. S. 669; see *Merchants Warehouse Co.* v. *United States,* 283 U. S. 501, 511; *Louisville & Nashville R. Co.* v. *United States,* 282 U. S. 740, 759; *Assigned Car Cases,* 274 U. S. 564, 579. Despite these opinions, appellees contend that evidentiary support is necessary and lacking for the "preferential service" conclusion three (R. 43) although, as related in the main report (209 I. C. C. 11, 33), this is only stating a legal fact.[16] There is really no

[16] The Commission quoted the following excerpt from *Davis* v. *Cornwell,* 264 U. S. 560, 562: "It was not necessary to prove that a preference resulted in fact."

difference between the quasi-judicial finding issues of the above cases and the issue raised here as to lack of evidentiary support for conclusion three. Appellees' position here, just as in the decided cases, would be sound if the findings were limited to the practices specified in Sections 2, 3, and 15, but the findings are not so limited. The supplemental report and order here are the same as those already sustained by this Court. And if it were unnecessary to enter quasi-judicial findings as to "preferential service" in the sustained orders, it follows that the same "preferential service" of this order requires no evidentiary support. As said by this Court in *Davis* v. *Cornwell*, 264 U. S. 560, 562, "The assumption by the carrier of the additional obligation was necessarily a preference." See also *Chicago & Alton R. Co.* v. *Kirby*, 225 U. S. 155, 165.

The view urged by appellees would impose an impossible task upon the Commission, as was stated in a comparable situation in *Union Stock Yard Co.* v. *United States*, 308 U. S. 213, 223–224:

> The issue to be resolved in the present proceeding is whether the service rendered by appellant at its Chicago stockyard brought it within the jurisdiction of the Commission. To this issue the practices by others at other yards are irrelevant and their bearing on the administrative construction of the statute in the present circumstances is, we think, too remote and indecisive to com-

pel a burdensome inquiry into collateral issues.

* * * * *

But mere inaction, through failure of the Commission to institute proceedings under § 15 (7), is not an administrative ruling and does not imply decision as to the Commission's jurisdiction. If the failure to act in the case of yards other than the present one is to be taken as an administrative construction of the statute persuasive here, we would be forced to conclude that a jurisdiction which the statute has plainly conferred either on the Secretary or the Commission, has been lost, although, with respect to this appellant, jurisdiction has been consistently asserted by the Commission, while the Secretary has as consistently remained passive. There is a practical limit to which inquiry into collateral issues may be extended in pursuit of the trivial. We think that limit was reached here.

Cf. *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671, 688–689; *Interstate Commerce Commission* v. *Columbus & Greenville Ry.*, 319 U. S. 551, 557–558.

B. EVEN IF CONCLUSION THREE REQUIRED EVIDENTIARY SUPPORT, THE COURT ERRONEOUSLY DECIDED THIS QUESTION UPON A PARTIAL RECORD

In deciding that the Commission's conclusion three, as to "preferential service not accorded to

shippers generally" (R. 43), was unsupported by evidence, the lower court based its decision upon a partial record, for the whole record was not before it.

In order to decide the question of evidentiary support for this finding of preference, the district court has erroneously ignored the important findings as to the switching situation at the Staley plant, the conceded authority of the Commission to decide what is embraced in the "transportation" (sec. 1 (3) (a)), the fact that this is not a finding of undue preference under Section 3, and that it is not a finding of fact but rather a statement of a legal fact, which requires no evidentiary support. In spite of all these seemingly unsurmountable legal obstacles to any decision with reference to evidentiary support for the finding, the court below decided that question upon the basis of a partial record. It has ignored the obvious fact, clearly insisted upon by appellants (see R. 132, 151), that the record considered by the court is only a part of what was before and considered by the Commission, and that the whole of the record was not produced.

Opinions of this Court extending over many years have so definitely recognized the necessity for producing the whole rather than a partial record, to permit the courts to review findings of the Commission, that the question would seem to be beyond argument. The rule has been repeatedly

stated that courts may review orders of the Commission to see whether the evidence supports the findings only when the whole record is before the court, since the part of the record not before the court may provide the needed support. The rule is stated in *Mississippi Valley Barge Co.* v. *United States,* 292 U. S. 282, 286, as follows:

> The settled rule is that the findings of the Commission may not be assailed upon appeal in the absence of the evidence upon which they were made. *Spiller* v. *A., T. & S. F. Ry. Co.,* 253 U. S. 117, 125; *Louisiana & Pine Bluff Ry. Co.* v. *United States,* 257 U. S. 114, 116; *Nashville, C. & St. L. Ry. Co.* v. *Tennessee,* 262 U. S. 318, 324; *Edward Hines Trustees* v. *United States,* 263 U. S. 143, 148; *Chicago, I. & L. Ry. Co.* v. *United States,* 270 U. S. 287, 295. The appellant did not free itself of this restriction by submitting additional evidence in the form of affidavits by its officers. For all that we can know, the evidence received by the Commission overbore these affidavits or stripped them of significance. The findings in the report being thus accepted as true, there is left only the inquiry whether they give support to the conclusion. Quite manifestly they do. * * *

See also *Louisville & Nashville R. Co.* v. *United States,* 245 U. S. 463, 466; *Spiller* v. *Atchison, T. & S. F. Ry. Co.,* 253 U. S. 117, 122, 125; *Louisiana and P. B. Ry. Co.* v. *United States,* 257 U. S. 114,

116; *Tagg Bros.* v. *United States*, 280 U. S. 420, 443.

There can be no question that the record upon which this order is based is only a partial record. The title of the report (R. 17) shows that it is a part of the general investigation under *Ex Parte 104*, 209 I. C. C. 11. Furthermore, this Court has recognized supplemental reports as being a part of *Ex Parte 104* proceedings. *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

The Commission said in its main report (209 I. C. C. 11, 43):

> Involved in this proceeding are approximately 200 industrial plants where spotting allowances are paid; and also numerous plants at which respondents assign locomotives to perform spotting service beyond the points of interchange. In either case a second placement of cars is made. * * *

Obviously, the partial record considered by the district court did not contain the evidence as to the several hundred industrial plants which had been investigated and the evidence as to which was contained in the whole record.[17]

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[17] Only a part of transcript volumes 3, 4, and 7 were produced, and none of transcript volumes 1, 2, 5, and 6 were produced. The partial record offered and considered by the court begins with transcript volume 3, p. 2220, omitting the first 2,219 pages, and it omits the entire transcript from p. 3777, volume 4, to p. 7134, volume 7.

The question of preferential service and lack of support therefor was urged by appellees in *United States v. American Sheet & Tin Plate Co.*, 301 U. S. 402, where the complete record was before the Court. The opinion took no note of the sufficiency of evidentiary support for the preferential service finding but considered only the necessity for findings under Sections 2 and 3, as raised thereby. The Court either conceived the point to be too frivolous for discussion or that the complete record there before the Court contained supporting evidence for the finding. At any rate, the opinion in the *American Sheet & Tin Plate Co.* case referred to the complete record, which was there offered in evidence, as follows (301 U. S. at p. 404):

> Voluminous evidence was adduced largely consisting of testimony by operating officials of carriers and traffic representatives of shippers touching the service of spotting cars at points upon the systems of plant trackage maintained by large industries. The Commission's report summarized its conclusions based on the evidence as to conditions at approximately two hundred industrial plants where spotting allowances were paid by the carriers and numerous plants where such services were performed by the carrier. * * *

No such record was offered for the consideration of the lower court herein.

III

THE DISTRICT COURT ERRED IN DECIDING FACTUAL QUESTIONS, INCLUDING QUESTIONS OF DISCRIMINATION AND PREFERENCE, AND IN DECIDING ADMINISTRATIVE QUESTIONS NOT DECIDED BY THE COMMISSION

The court below has found two facts, neither of which was determined by the Commission, and neither of which was necessary or required under previous decisions of this Court, to render the report and order herein valid. It has found that the switching situation at the Staley plant was similar to that at other nearby and competing industries, and it has found that discrimination and preference, prohibited by Sections 2 and 3, resulted against the Staley Company because of the order. Both are factual decisions of the lower court and not a review of a decision of the Commission, for those facts were not determined by the Commission.

Such decisions belong to the administrative function of the Commission. When made, they are subject to court review under well defined limits, as fixed by previous decisions of this Court. However, in reviewing such orders a court may not, under the primary jurisdiction doctrine, substitute its judgment for that of the Commission on an administrative question, decide questions of fact differently where there is evidentiary support for the order, or decide factual and administrative questions originally where there is no decision of the Commission thereon. As was said in *Inter-*

state Commerce Commission v. *Union Pacific R. R.*, 222 U. S. 541, 547:

> In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. "The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience." *Ill. Cent.* v. *I. C. C.*, 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

See also *Armour & Co.* v. *Alton Railroad Co.*, 312 U. S. 195; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 136, 146; *Virginian Ry.* v. *United States*, 272 U. S. 658; *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268, 271; *Interstate Commerce Commission* v. *Illinois Central R. Co.*, 215 U. S. 452, 470; cf. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426.

The court below has not confined itself to a review of the Commission's order, but, as essential

to its conclusion, has decided facts for itself. The opinion (R. 136) states in some detail the switching situation at plants of claimed competitors of the Staley Company. In effect, the court has found as a fact, that "actual conditions of operation" (*Los Angeles Switching Case,* 243 U. S. 294, 311) and "evidence respecting the operations at the plant" (*United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402, 411) of each of the named Staley competitors, is such as to require a spotting charge at those plants if a spotting charge is to be imposed here. Surely the district court has not intended to establish a principle which would require a spotting charge at the Corn Products plant, for example, simply because that industry is in competition with Staley. If such a principle should be established, it would empower the Commission to order a spotting charge against all industries proven to be competitors of the one involved in the case before it, without investigation, hearing, or knowledge of the "actual conditions of operation" in the competitive plant. The Commission prefers to follow the principle stated by this Court in the *American Sheet & Tin Plate Co.* case that "evidence respecting the operations at [each] plant" (301 U. S. at 411) is necessary to such a decision. Obviously, it is possible for "actual conditions of operation" (*Los Angeles Switching Case,* 243 U. S. 294, 311) at one plant to warrant and require a spotting

charge since outside the line-haul obligation, while at a competing plant "evidence respecting the operations" may show that the spotting is within the line-haul obligation, and therefore no charge could be made therefor. The Commission has not here looked to conditions at the plants of Staley's competitors, believing it desirable and necessary to ascertain, by separate investigations, the "evidence respecting the operations" at those plants, and deciding the question only after each industry has been given a full and fair hearing. No order has been entered in those cases which could be reviewed by the court.

Under opinions of this Court, it would be error for the Commission to attempt decision as to spotting service at any plant, in the absence of evidence of the actual switching situation involved and a hearing for all parties. See, *e. g., United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.,* 304 U. S. 156. The plants competing with Staley were not before the Commission under any proceedings then pending, and testimony concerning the situations at such plants was merely collateral and irrelevant to a determination of the conditions at Staley. *Union Stock Yard Co.* v. *United States,* 308 U. S. 213, 224.

The court below has also decided that discrimination and preference against the Staley Com-

pany, prohibited by Sections 2 and 3 of the Act, have resulted from the Commission's action.[18] This is another determination by the court which had not been made by the Commission. Yet, what constitute undue preferences and unjust discriminations are questions of fact confided to the judgment and discretion of the Commission. *Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457, 481; *United States* v. *Chicago Heights Trucking Co.,* 310 U. S. 344, 352–353; *Board of Trade of Kansas City* v. *United States,* 314 U. S. 534, 546; *Barringer & Co.* v. *United States,* 319 U. S. 1. Such questions must be resolved initially by the Commission, subject to review by the courts. No proceedings concerning such questions have been instituted before the Commission, either upon complaint of interested parties or by the Commission upon its own motion.

The complaint and opinion below clearly show (R. 11, 137, 138) that the "preference and discrimination" alleged and found were by comparing the Staley situation with the situations of other shippers in the same locality and on the lines of these carriers, or in direct competition with the Staley Company. However, Section 6 (7) does not contemplate such a limited comparison be-

[18] In effect, the court has found as a fact that the Commission committed a forbidden discrimination and preference (R. 138). The Act only forbids carriers to commit such acts (secs. 2, 3) and makes the Commission responsible for these factual determinations.

tween a shipper and his neighbors or competitors. A "preferential service" (R. 43) flowing from a violation of Section 6 (7) must be found by comparing any preferred shipper to another, even though separated by the continent and engaged in an entirely noncompetitive business. An allowance or free service condemned by the Act constitutes a rebate whether extended to a favored steel industry or a food-processing company, to a lumber company in Oregon or to a stockyard in Chicago. The character of the service would be equally wrong for all shippers in all businesses, and the same service must be given every community as that which may be given to the preferred community. "Shippers generally" as conceived by this complaint and the court below, are only those in close proximity to the Staley Company, but the vision of the Commission under statutory direction must include all shippers of whatever kind and every community.

The court below in attempting to distinguish cases already decided by this Court, held (R. 138) that the question of discrimination was not before this Court in the *American Sheet & Tin Plate Co.* and *Pan American Petroleum Corp.* cases, *supra,* (301 U. S. 402; 304 U. S. 156), and that in those cases the Court was dealing with a number of like orders relating to a group of competing industries. However, neither the Commission nor the Court has, in these *Ex Parte 104* supplemental reports, dealt with a number of like orders in

relation to a group of competing industries. This Court has considered on appeal cases involving steel companies, petroleum companies, lumber companies, and others. See p. 37, *supra*. Lower courts have decided cases involving a number of industries, and supplemental reports have dealt with even a larger variety.[19] See fn. 14, p. 37, *supra*.

IV

THE COMMISSION'S ORDER IS NOT ARBITRARY

One of the grounds upon which the lower court held the order invalid was that it is unjust and unreasonable (R. 139). This is equivalent to holding that the order is invalid because arbitrary. This viewpoint was based upon a conception that it was the duty of the Commission, in deciding the question of terminal service at the Staley plant, to decide the same question as to industries in competition with that company. However, such action is not required of the Commission by statute or decisions of this Court.

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[19] The *Ex Parte 104* investigation was country-wide in scope and dealt with a number of different kinds of industries and was not confined to a particular class of industry or a particular rail line or locality. Not all of the industries in the various classes investigated, or even all of those of a particular locality or on the lines of a particular railroad were included in these investigations. In order that the Court may realize the scope and kind of industries considered, a list of all supplemental reports entered by the Commission is attached hereto as Appendix II, citing Commission reports and a statement of the location and nature of industries involved.

That some inequality may result from this order and from the fact that other cases have not yet been decided by the Commission is possible. The Commission has not decided the possible question of inequality for it has not had facts before it sufficient to decide such a question. To assure validity of the order here considered, it is not required to make such a decision. The court below has decided the question of inequality, on the basis of facts contained in a partial record, which were deemed by the Commission as insufficient to show substantial similarity between the operations involved at Staley and its competitors. On that basis, the district court held that the recognized authority of the Commission to decide where transportation begins and ends at a particular plant cannot be exercised until the Commission, by its voluntary action, forces carriers to apply the same kind of tariff charges to other competing industries.

The effect of the ruling below is that where the Commission discovers a prohibited rebate granted a particular industry, it cannot, under conceded authority, take action to stop it until every other rebate, claimed as similar and made to competing industries, is simultaneously stopped by the Commission's action taken on its own motion. The decision below would result in permitting continuance of a recognized variation from published rates prohibited by Section 6 (7) until the Com-

mission can make a decision as to all other like rebates and stop them simultaneously.

Such a rule would require of the Commission a herculean if not an impossible task; it completely overlooks the practical problems involved in ridding railroad operation of rebates, such as this, and the possibility that an authority other than the Commission might act to remove the preference and discrimination found by the court. To say that the Commission is solely responsible for that preference and discrimination, and that failure of the Commission to force carriers to equalize spotting charges, justifies continuance of a rebate, would eliminate ordinary practical solutions of such problems, would place an insurmountable obstacle upon the Commission's efforts to carry out its duty in enforcing the Interstate Commerce Act, and would greatly enlarge the opportunity for carriers to continue the practice of rebates to favored shippers.

The struggle of railroads to avoid the Commission's authority, under Congressional mandate, to remove all discriminations, preferences, and rebates, has been long and tedious. Rail management has been most reluctant to give up favoritism as an instrument of competitive advantage, by use of which they are able to procure a greater share of freight. Volume freight is the reward of rebates, and for this reason large shippers have been recipients of this largess. Congress, the Commission and the courts, representing "the scattered and unorganized sufferers from favoritism"

(*Chicago & Alton R. Co.* v. *United States*, 15 Fed. 558, 562 (C. C. A. 7), affirmed, 212 U. S. 563) have struggled to procure equal treatment for them. In later years, carriers and preferred shippers have resorted to a variety of disguises, designed by their cooperative effort to evade legislative prohibitions against rebates. Where removal of the disguise has revealed the rebate, it has been found in variegated form, such as transporting free private cars of other carrier officials;[20] allowances to warehouses, under contract, to assemble less than carload freight into carloads at carload rates;[21] the payment of allowances to industries for performance of their own spotting service, under claim that the service was a part of carrier obligation;[22] and many others.

Terminal services were long recognized as a prolific field for rebates, having been the subject of both many decisions[23] and of railroad associations' efforts to provide uniform and equal service for all shippers through universal rules voluntarily adopted by all carriers (see *Ex Parte 104*, 209 I. C. C. at p. 18). Failure of the cooperative railroad effort inevitably led to the Commission's action, upon its own initiative, in *Ex Parte 104*,

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[20] *Louisville & Nashville R. Co.* v. *United States*, 282 U. S. 740.

[21] *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501.

[22] *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

[23] See, *e. g.*, *Car Spotting Case*, 34 I. C. C. 609; *Gallagher* v. *P. R. Co.*, 160 I. C. C. 563.

209 I. C. C. 11. It was there found that excessive terminal service was rendered to many industries, being greater in some sections of the country than others, greater for some industries than for others, even on the same line, and that it amounted to a widespread preference and rebate in violation of law.

Investigations under *Ex Parte 104* included hundreds of industries throughout the country, and seventy-four of those cases have been decided by the Commission under supplemental reports. Thirty-one of these supplemental orders have been subjected to judicial review and approved, in addition to other orders where judicial action was dismissed in view of decisions of this Court. The investigation and consideration under *Ex Parte 104* was not, as the lower court seemed to think (R. 138), limited to a group of competing industries where allowances were paid, or to a particular part of the country.

Reference to all supplemental reports, entered to present date (Appendix II) will disclose continuance of investigations and decisions of cases involving a wide diversity of industries all over the country. These cases are found in 22 States, and relate to 25 different industries, including iron, lumber, oil, cement, paper, automobile manufacturing, glass, mining, meat packing, salt, and food processing.

In view of these facts, the finding (R. 138) of the court below that proceedings in *Ex Parte 104*, or

judicial decisions on supplemental orders thereunder, were concerned only with a group of related and competing industries, was entirely unjustified. No one has yet plumbed the extent and ramification of excess terminal services presently existing, or could know the number of such possible cases that may have to be investigated and decided by the Commission, if compelled to do so because of the opposition and non-cooperation of rail carriers.

The Commission from the beginning understood the tremendous scope, the multitude of industries, and the enormous task and difficulties involved. That it must be finished if equality of treatment for all shippers is to be assured, appears necessary on the face of the facts already established. No one could gainsay the justice and statutory purpose to provide an equal terminal service to all. That can be provided only when all are given the same service, granted the same allowances, and charged alike for that in excess of transportation included under line-haul rates. As stated by this Court, that determination must be upon the evidence of conditions of operations at each particular plant. *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156. Evidence as to one plant obviously could not disclose operating conditions at another plant. Comparison of similarity between two plants affords

no practical basis for decision, since each case must be heard on its own record, with a full hearing and opportunity to submit evidence.

The vastness of this problem and the time required for completion of its solution by the Commission would appear obvious. Yet the court below holds (R. 139) that the Commission must devise some over-all solution and decide all competitive cases simultaneously, or at least within some arbitrary limit to be decided by that court in this case, and by other courts in other cases, and that failure of the Commission so to decide all cases renders invalid the order in the one case reached and decided.

There is another solution of the problem possible in a very short time and with little effort, a solution known to and recognized by the Commission since long prior to the beginning of *Ex Parte 104*, 209 I. C. C. 11. Carriers may decide, where the Commission has not acted, what is or is not a service in excess of the line-haul obligation, under principles already established, and if beyond that limit may voluntarily provide a tariff charge therefor. Efforts of carrier associations to establish rules to assure uniform practice and rates respecting terminal services (see p. 68, *supra*) recognized the carriers' opportunity to accomplish that purpose by their own voluntary action. It cannot be doubted that rail carriers know the possibility of this simple solution, and that they could, if they were willing

to cooperate, establish tariffs providing for equality of charges where they believe, as alleged here, that there is a similar service.

In such a situation, where the Commission knew the enormity of the task, if it were to undertake compulsory enforcement of established principles governing terminal services for all industrial plants within the nation, it was surely not arbitrary to enter "sample" orders which could easily be followed by the voluntary action of carriers. Here the carrier appellees insist that if the Staley Company is required to pay a spotting charge, its competitors must also be required to do so.

Appellees contend, and the court has so found, that unequal treatment has been accorded the Staley Company as compared to competing industries solely because the Commission has failed to decide as to the spotting service at those other plants. If they believe their own allegations, they must fully understand that application of the principles established by the Commission with this Court's approval would require a tariff charge for those other plants, and that the services there involved are not a part of their line-haul obligation. They do not here seek to provide a charge for those other industries which they and the court seem to think would equalize the treatment of the Staley Company, but rather are seeking to avoid all possibility of fixing a charge at those plants and at the Staley plant, regardless of the kind and character of service involved.

If, as appellees claim, they render a similar service free to other industries as that decided by the Commission in the instant case to be beyond the line-haul obligation, it is apparent, under principles approved by this Court, that such service is not a part of their obligation. See, e. g., *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156. If they know this to be true, they need not await the Commission's compulsion to force them to act. Carriers are free to establish their own tariffs. Tariffs are not initiated by the Commission, whose only function is to decide the justness and reasonableness of those filed by carriers. Surely these carriers have understood, from principles established by approval of this Court, what kind of terminal service is or is not a part of their line-haul obligation, and could if they wished conform thereto. Here their voluntary application of these principles would, if their allegations are correct, remove the very preference and discrimination of which they complain.

Appellees contend (R. 10) that it was a duty and responsibility of the Commission to make certain that any order it entered did not result in unjust discrimination in violation of Section 2 or undue preference in violation of Section 3. With this view the lower court agreed (R. 138). The Act places no such duty or responsibility upon the

Commission but does prohibit such acts when committed by carriers. It may therefore be seen that whatever inequality may result from this order, is not because of the non-action of the Commission, but rather because of the nonconformity and non-action of these carriers, who could not fail to have understood principles so clearly stated and firmly established.

In the past, carriers have decided for themselves what is embraced in transportation under line-haul rates, not always alike. Those in New England and the Southeast regarded limits of this transportation as fixed by the nature, desires or disabilities of a plant, and that interchange tracks were proper points for receipt and delivery of freight. (209 I. C. C. at pp. 33–34.) Carriers decided the question differently even as to plants operated by the same company, as shown by supplemental reports [24] of the Commission under *Ex Parte 104.*

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[24] The Wheeling Steel Corporation (decided as the forty-sixth supplemental report, 214 I. C. C. 53), operated seven plants, three with free carrier switching, three with allowances for industry switching, and one where carriers refused allowances, which action was approved by the Commission (*sub nom. Whitaker-Glessner Co.* v. *B. & O. R. R. Co.*, 63 I. C. C. 47). The supplemental report approved the free carrier service at three plants and canceled all allowances. The Commonwealth Edison Company (decided as the forty-ninth supplemental report, 215 I. C. C. 173) operated five plants, four with industry-performed spotting, two under allowances and two without, and the fifth with free service by the carrier. The Commission approved free service at

Thus, in various cases, carriers had, prior to action by the Commission, decided for themselves what spotting service at each plant was within the line-haul obligation, and as evidenced by refusal to pay allowances for industry performance, decided that some were not entitled to free carrier service. Principles established by the Commission, with approval of this Court, under *Ex Parte 104,* provide clear and understandable guides for such carrier determinations, which may be easily applied by their voluntary action. *United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.,* 304 U. S. 156. Here appellees refuse to apply those principles, contending that their custom of free service to all shippers, the competitive status of some shippers, and the claimed similarity of service as between plants warranted their non-action. They must know that their claimed practice of free spotting for all shippers, regardless of the nature, desires, or disabilities of a plant, differs from the practice of other carriers, and does not conform to the standard of simple and single movement, which this Court held the proper

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the one but held service at all four industry-served plants as not within the line-haul obligation, and canceled allowances paid at two. The situation at the United States Gypsum Company was considered under *Ex Parte 104* investigations, but under pending complaint as to allowances (220 I. C. C. 797), was disposed of, without supplemental report, when the New York Central voluntarily canceled allowances under its tariffs.

basis of determination. They still cling to the theory, as alleged in their complaint, that all industries, including the Staley Company, are entitled to free spotting, in spite of obstacles, incapacity, multiple movements, and standby service, so clearly shown to exist in the Staley service.

These carriers know that they may avoid penalty liability for such non-conformity, until the Commission may by order in each particular case force them to act. They here indicate further continued opposition to the principle that the Commission has authority to decide the beginning and ending of transportation. Their evasive persistence delays and hinders action of the Commission to equalize such charges. They know that if the order herein is finally held invalid that it will constitute an insurmountable obstacle to similar orders as to any or all of the claimed competing industries, because then the carriers could claim with equal force that such orders would result in a prohibited preference to the Staley Company.

It thus becomes apparent that the real objective of this action is not to assure equality of charges to competing industries, on the basis of applying to all the established terminal principles, which could be accomplished by voluntary carrier action, but rather to avoid such a charge as to all. It evidences continuance of the effort of these carriers to retain for themselves the right to decide, within their own discretion and without the Com-

mission's intervention, what is or is not a part of their transportation obligation. The benefit of this discretionary right would then be extended to the Staley Company as well as to other industries of these carriers' own selection. Their discretion could be exercised in complete disregard of principles established by the Commission and approved by this Court, to the effect that interferences, obstacles, and necessity to coordinate carrier and industry operations, would mark such a free service as a departure from the line-haul rates. See, *e. g., United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.,* 304 U. S. 156. In such a manner, these carriers, and industries located on their lines, would obtain a competitive advantage over other carriers and other industries where, under final judicial decisions, similar free services have already ceased. The complaint herein makes it clear that this objective is not equality of treatment to industries on their lines but is a continuation, by indirect methods, of these carriers' efforts, previously presented by direct methods, to oppose the basic authority of the Commission to decide where transportation begins and ends. The complaint (R. 9) expresses the intention and belief of these carriers that services now performed at the Staley plant are not beyond their obligation under established rates. It is alleged (R. 6) that they reached the conclusion

that continued imposition of the Staley charge resulted in unreasonable rates. It is obvious from these allegations that these three carriers wish to decide what is or is not a part of their transportation obligation, without regard to "the evidence respecting the operations at [each] plant." *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 411. Such a basis differs from that upon which the Commission decided similar questions with judicial approval. These three carriers simply disagree with the Commission's conclusion in the instant case that the evidence of operations within that plant warrants the finding that the service is not carrier transportation. This Court in other cases (see cases cited, *supra*, p. 37) has said that such facts are sufficient to warrant such a decision. Thus, the Commission expected that the rail carriers would abide by principles plainly established and clearly stated in *Ex Parte 104*, 209 I. C. C. 11. This expectation has not been realized because some carriers, including the appellees, have refused to abide by the established principles. This is reflected in the excerpt from the Commission's 57th Annual Report to Congress, reproduced in the Appendix, *infra*, pp. 91–92.

Another way to avoid inequities claimed to result from the order, is one commonly used by those who believe they have been discriminated against. In many cases the Commission does not

know of existing inequities. Those who encounter inequities know of their existence and accordingly complain to the Commission. Here either the Staley Company, which claimed to have been discriminated against, or these three carriers who support that theory, might long ago have filed a complaint with the Commission, had they seen fit to do so, which would certainly have precipitated hearings and decisions. No such complaints were filed.

It is clear that the inequalities complained of could have been removed in three ways: (1) by the voluntary action of the carriers in filing their tariffs, (2) by complaint to the Commission filed by either the Staley Company or the appellees carriers, or (3) by action by the Commission on its own motion. The simplest method is, of course, the first; if unopposed, the tariffs could become effective within 30 days or, with the Commission's approval, in less time. Section 6 (1), (3) (49 U. S. C. 6 (1) (3)). Complaint by the Staley Company or the carriers would have required their submission of evidentiary support. The third method, action by the Commission upon its own motion, would relieve the Staley Company and carriers of preparing and submitting evidence in support of the issue, leave them free to oppose the Commission's efforts and place all the burden of investigation upon the Government.

The court below ignored the two simple alternatives to action by the Commission. The court

was shocked at the Commission's delay in taking action, but apparently was unconcerned over non-action of Staley, the party chiefly interested, and of the three carriers who claim such unwillingness to have one valued shipper subjected to such an inequality. It seems clear that non-action of these parties was designed to interpose every possible obstacle and delay to the Commission's efforts to apply principles, established with approval of this Court (*e. g., United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402) to terminal services generally.

If the court below had understood the real factors as stated above, it would have realized that the Commission has not planned to cause inequalities, preferences, or discriminations in respect to railroad operation. The court might have seen that here the Commission in dealing with widespread and long-continued rebates under the guise of terminal services, was faced with a particularly difficult task, the accomplishment of which involved delays and perhaps temporary inequalities. The court might have seen that for the time being the Staley Company was subject to a terminal charge because that case had been reached and decided, and as a result would not be treated exactly like its neighboring competitor, not yet covered by a decision. The court overlooks the possibility that such inequities, here com-

plained of, might have been removed by action of these carriers or by the Staley Company itself. It is difficult to see how anyone might, in the face of all these facts, find that the Commission has been arbitrary, simply because it has not yet decided the case of every Staley competitor with reference to the spotting services involved.

The many cases cited above, particularly *Union Stock Yards Co.* v. *United States,* 308 U. S. 213, 223–224, where failure to apply similar action to more than a hundred similar industries did not render the order invalid, provide an abundance of authority for the statement that as a matter of law, the Commission's failure to act as to Staley's competitors does not render the order as to that company invalid. To sustain the decree herein would truly prescribe impossible requirements precluding removal of rebates.

It seems inescapably correct, that if the 31 *Ex Parte 104* supplemental orders, already approved by the courts, are valid, that the supplemental order in the present case must be valid. It is difficult to see how approval of the Commission's order by this Court in *United States* v. *American Sheet and Tin Plate Co.,* 301 U. S. 402, and by a statutory district court in *Inland Steel Co.* v. *United States,* 23 F. Supp. 291 (N. D. Ill.), could fail, for the same reasons, to compel approval of the order herein. Both those cases and this one involved the

same carrier performance of the same kind of spotting service held by the Commission in each, on the same kind of evidence, not to be within the line-haul obligation.

CONCLUSION

For the foregoing reasons, the decision of the district court should be reversed, the injunction ordered dissolved, and the petition dismissed.

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FEBRUARY 1944.

APPENDIX I

Interstate Commerce Act, February 4, 1887, c. 104, Part I, 24 Stat. 379, as amended.

Section 1 (3) (a) provides:

> The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier, operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property

transported. * * * (49 U. S. C. 1 (3) (a).)

Section 2 provides:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. (49 U. S. C. 2.)

Section 3 (1) of the Act provides:

> It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this

paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description. (49 U. S. C. 3 (1).)

Section 6 (1) provides:

That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in

two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this part. (49 U. S. C. 6 (1).)

Section 6 (7) provides:

No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs. (49 U. S. C. 6 (7).)

Section 12 (1) provides:

The Commission shall have authority, in order to perform the duties and carry out the objects for which it was created, to inquire into and report on the management of the

business of all common carriers subject to the provisions of this part, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with, such carriers, to the extent that the business of such persons is related to the management of the business of one or more such carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this part; and may transmit to Congress from time to time such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary. The Commission is hereby authorized and required to execute and enforce the provisions of this part; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this part and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this part the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. (49 U. S. C. 12 (1).)

Section 13 provides in part:

(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this part, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and

power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. * * * (49 U. S. C. 13 (1), (2).)

Section 15 provides in part:

(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, reg-

ulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

* * * * *

(13) If the owner of property transported under this part directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this part and shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on

its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

(14) The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this part. (49 U. S. C. 15 (1), (13), (14).)

The Commission's 57th Annual Report to Congress (November 1, 1943), in discussing the Commission's attempt to correct problems of rebates given under the guise of terminal service, states (pp. 57, 58–59):

> After this decision of the Supreme Court, an effort was made to have the railroads canvass the situation at other plants where the industry was either performing the spotting service with its own power and receiving an allowance from the railroads, or where the latter were performing the spotting service under direction of the industry without charge in addition to the line-haul rate, with a view to bringing such practices into conformity with the principles announced by us and approved by the Supreme Court. We have met with no success in this effort. The carriers have failed voluntarily to apply these established principles, with the result that the practice of paying allowances or performing free switching services is not uniform in all parts of the country or even on the lines of single carriers.

The task of enforcing compliance with these understandable principles is of gigantic proportions, but seemingly one that must be met if uniform practice in respect to allowances and switching services and equality of treatment is to be provided for all shippers. We are investigating the situations at a number of plants.

Because of the time that has elapsed since the original hearing, conditions have changed at some of the plants; necessitating further hearings. In view of the reluctance of both the carriers and the industries voluntarily to give us all the facts upon which we can make a proper determination, we have found it necessary to conduct field investigations through our own employees. This is time consuming. In at least one case, where the industry was performing the spotting service with its own power and the allowance received therefor was condemned as unlawful, the industry disposed of its power and requested the respondents to perform the service. This the respondents did, making a charge against the industry for spotting services. We approved the imposition of the spotting charge. The case is now before the Supreme Court for decision. In attacking our order in the lower court, the industry contended that it was unjustly discriminatory and unduly prejudicial to require it to pay a spotting charge when its competitors receive such service from the carriers without charge. We are investigating all such alleged preferred services with a view to determining whether the service performed at such plants by the carriers is in excess of that which the carriers are obligated to perform under their line-haul rates.

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7th Sup. Rep.—Ford Motor Company, Detroit, Mich. Automobile manufacturer.	May 14, 1935 209 I. C. C. 77
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20th Sup. Rep.—Wickwire-Spencer Steel Company, Harriet, N. Y. Manufacturer of pig iron, wire, wire rods, wire fence, wire mesh, and wire nails.	July 11, 1935 209 I. C. C. 751
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U. S. GOVERNMENT PRINTING OFFICE: 1944

Office - Supreme Court, U. S.
MAR 6 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term

Number 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

LOUIS H. STRASSER,
WILLIAM B. BROWDER,
ELMER A. SMITH,
Attorneys for Appellees.

State Law Printing Company, 173 W. Madison St., Chicago—FRAnklin 5591

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IN THE

Supreme Court of the United States

October Term

Number 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, AND ILLINOIS TERMINAL RAILROAD COMPANY,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

Opinions Below.

The opinion of the specially constituted District Court (R. 134-139) is reported in 51 F. Supp. 141. The report of the Interstate Commerce Commission (R. 17-46) appears in 245 I. C. C. 383.

Jurisdiction.

The final decree of the District Court was entered on July 14, 1943 (R. 143-144). The petition for appeal was filed on August 26, 1943 (R. 150) and was allowed on the same day (R. 153). The Court's jurisdiction rests upon the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 220, 28 U. S. C., sec. 47a), and Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C. Sec. 345). Probable jurisdiction was noted on November 22, 1943 (R. 891).

Statutes Involved.

The pertinent provisions of the Interstate Commerce Act are set forth in Appendix I (Sections 1(5)(a), 1(6), 2, 3(1), 6(7), 13(2), 15(1), and 15(13).

Questions Presented.

The ultimate question presented is whether the Commission's order of May 6, 1941 (R. 46) is a valid and a lawful order. This order required appellees to cancel on or before June 20, 1941, certain tariff schedules filed by them on November 10, 1939, in which they proposed to cancel the charge of $2.50 per loaded car then being made for placing cars at points of loading or unloading within the plant area of the A. E. Staley Manufacturing Company at Decatur, Illinois. The proposed cancellation was suspended by the Commission in *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill.*, in which the Commission's order of May 6, 1941, was entered.

The specially constituted District Court in its opinion of June 10, 1943 (R. 134-139), held that the order of May 6, 1941, was unlawful. It set aside and annulled the order in its final decree of July 14, 1943 (R. 143-144).

The Court, following a petition filed by the defendants (R. 145-148), entered an order on August 24, 1943 (R. 149-150) staying the injunction granted by the decree pending an appeal to and decision by the Supreme Court.

Subordinate questions presented are:

1. Whether the Commission properly construed and applied the standards laid down in the Interstate Commerce Act which govern its action and by which the rights of parties before the Commission are determined.

2. Whether the Commission applied the tests which it has laid down whereby it may be determined whether a particular service is within the scope of the railroad's legal obligation.

3. Whether the Commission's action was arbitrary.

4. Whether the Commission recognized the fundamental justice of the lower court's opinion when the Commission instituted an investigation respecting the switching services being performed at competing plants at Decatur and Chicago named by the lower court in its opinion.

5. Whether certain findings and conclusions in the Commission's report are supported by facts more particularly set forth in that report and by the evidence.

6. Whether the lower court recognized that the determination of administrative questions is confided to the Commission, and whether the court left those questions to be determined by the Commission, but in accordance with the statutory standards which govern the Commission's action.

STATEMENT.

The Commission by its order of July 6, 1931 in *Ex Parte 104,* instituted an investigation on its own motion concerning the practices of railroads which affected operating revenues or expenses. Part II of this investigation dealt with the terminal services of Class I carriers.* (R. 80). The Commission, following extended hearings dealing with the terminal services at particular industries, issued its report on May 14, 1935 in this proceeding (*Propriety of Operating Practices—Terminal Services,* 209 I. C. C. 11), in which it announced certain principles respecting the payment of terminal allowances by railroads to industries for performing switching services at their plants, or the performance of such services by the railroads themselves.

Among the industrial plants, the switching services at which were investigated by the Commission, was the plant of the A. E. Staley Manufacturing Company at Decatur, Illinois. The record before this Court includes the testimony taken by the Commission in 1931 and 1932 in the course of its investigation which related to the terminal services at the Staley plant (R. 164-241).

The Staley Company began operations in Decatur in March 1912, at which time the Staley plant was actually switched by the Wabash Railroad and the Baltimore & Ohio Railroad with their own engines (R. 373). Other railroads reaching Decatur, like the Illinois Central, absorbed the switching charge of the Wabash and the Baltimore & Ohio (R. 373).

* Class I carriers are those having revenues of more than $1,000,000 annually.

In 1922 the Wabash and the Baltimore & Ohio ceased to perform the switching services at the Staley plant. The Staley Company at that time placed cars at the various locations within its plant with its own engines and received for that service a terminal allowance (R. 373), under Section 15 (13) of the Interstate Commerce Act.

In its 55th Supplemental Report in *Ex Parte 104, Part II, A. E. Staley Manufacturing Co. Terminal Allowance,* decided May 22, 1936, 215 I. C. C. 656, the Commission held that the transportation services for which the railroads were compensated in their line-haul rates began and ended at certain interchange tracks described in the report. The Commission held that the payment of an allowance to the Staley Company for services performed beyond those tracks on interstate shipments was unlawful.

The Commission's order of May 22, 1936 was postponed from time to time until June 15, 1937 (R. 19). But all allowances made to the Staley Company were discontinued on or about June 23, 1936, on which date the Staley Company ceased to perform switching services (R. 19, 374). Since that date all switching within the plant of the Staley Company has been performed by the Wabash Railroad (R. 19).

The Commission's order of May 22, 1936 in *A. E. Staley Manufacturing Co. Terminal Allowance,* 215 I. C. C. 656, required by its terms that the railroad companies discontinue paying any allowance to the Staley Company. But the Commission had found in its report that the transportation service for which the railroads were compensated in their line-haul rates began and ended at the interchange tracks described in the report. The railroads felt impelled by these findings (R. 376) to establish a charge of $2.27 per car against the Staley

Company for the services beyond the interchange tracks. The tariffs providing for such a charge on interstate shipments took effect on November 15, 1937.* This charge was later increased to $2.50 per car (R. 20, 375).

At the time the railroads proposed to establish this charge of $2.27 per car against the Staley Company, that company filed a petition with the Commission protesting against the charge and seeking a suspension of the tariff naming the charge. (Suspension Petition of October 27, 1937, Appendix B to intervention of the A. E. Staley Manufacturing Company, R. 85, 104-116). This Petition stated that the application of such a charge would create undue prejudice and unjust discrimination against the Staley Company and its traffic, and unjust preference of numerous competitors of the Staley Company in violation of Sections 2 and 3 (R. 106). The Commission, however, declined to suspend the tariff, and the charge of $2.27 took effect on November 15, 1937.

Appellees, at the time they filed tariffs with the Interstate Commission providing for this spotting charge of $2.27 per car, filed with the Illinois Commerce Commission tariffs naming the same charge applicable to Illinois intrastate shipments. The Illinois Commission found, following a hearing (report of July 26, 1938, R. 867-878), that generally the line-haul rates in Illinois and throughout the country include terminal services at points of origin and destination, and that whenever an exception is made, such exception is grounded on the fact that the railroad is prevented from performing an uninterrupted service at points of loading and unloading because of some action or disability on the part of the industry.

The Illinois Commission further found that no such

* A charge of $1.87 per car was collected by the railroads for performing switching services during the period from June 15 to November 14, 1937 (R. 19, 374).

action or disability of the Staley Company interrupted the movement of cars in or out of loading and unloading points; that no charge is proposed to be established on any traffic moving to and from Decatur except the traffic moving to and from the Staley plant, and that no similar charge is proposed by the railroads at any other point in Illinois. The Illinois Commission held that the assessment of such a charge would result in unjust and unreasonable rates and would subject the Staley Company to discrimination. Tariffs proposing such a charge were required to be cancelled (R. 877).*

The Interstate Commission in its report of May 6, 1941 (R. 20) points out that on June 16, 1936, or a little more than three weeks after the decision of May 22, 1936 in *A. E. Staley Mfg. Co. Terminal Allowance,* 215 I. C. C. 656, the Staley Company petitioned the Commission to reopen the proceeding for further hearing on the ground that it contemplated discontinuing the service of performing itself the switching in its own plant, with a view of creating a new arrangement under which it would expect the railroads to spot the cars for loading and unloading without charge to the industry. The Commission denied this petition on November 9, 1936 (R. 20).

On May 29, 1937 the Staley Company filed another petition with the Commission asking that the proceeding be reopened for reconsideration or rehearing. The Commission denied this petition on June 8, 1937 (R. 20).

The Staley Company, assuming that the railroads would refuse to switch its plant, filed a bill in the United

* The Interstate Commission in its report of May 6, 1941 in the case at bar, contented itself with stating that the services involved in the spotting of intrastate shipments at the Staley plant are similar to those required in the spotting of interstate shipments, and that the State authority prohibits the collection of charges for spotting intrastate shipments. This, so the Interstate Commission said, raises the question of discrimination between interstate and intrastate commerce which is not in issue.

States District Court at Springfield for mandamus on June 11, 1937, just before the effective date of the Commission's order in *A. E. Staley Mfg. Co. Terminal Allowance*, 215 I. C. C. 656. The railroads continued to switch the plant. But at a hearing in the proceeding counsel for the Staley Company said to the court that unjust discrimination and undue prejudice existed against the Staley Company. Counsel for the Commission took the position that the Commission had exclusive jurisdiction to deal with such questions. He was asked by the court how long before the Commission would act. Commission's counsel replied that it would be in a couple of months (R. 639). This was in February, 1938.

On March 16, 1938 the Staley Company filed a petition with the Commission in which it repeated its request for reconsideration (R. 97-104). The Staley Company alleged that the imposition of the switching charge of $2.27 per car on the Staley Company's traffic subjected the Staley Company to unequal treatment in violation of Section 2, and to undue prejudice in violation of Section 3 of the Interstate Commerce Act (R. 101-102). The Staley Company further alleged that the switching service for which it was required to pay this charge of $2.27 per loaded car was the same service which the same railroad and other railroads furnished under their established freight rates to all competitors of the Staley Company. The names of the Staley Company's competitors, together with the location of their plants, were set forth in detail in the petition (R. 100-101). The petition further alleged that the charge of $2.27 per loaded car was not then being made and never had been made at any other industry in Decatur or at other cities in which the same general system of freight rates was in force (R. 101).

The Commission by its order of April 8, 1938 modi-

fied by its order of May 4, 1938, reopened the proceeding for further hearing, but limited the hearing to the presentation of evidence of changes since the prior hearing in operating or other conditions with respect to the interchange, delivery or receipt of cars handled to or from the Decatur plant of the Staley Company (R. 21).

A further hearing was held at Chicago on June 27, 1938. The testimony offered at this further hearing is a part of the record before this Court (R. 242-370). At this hearing evidence was offered on behalf of the Staley Company showing that no charge is made in addition to the line-haul rate against the competitors of the Staley Company located in Decatur or at other places for the placement of cars at points of loading and unloading within their plants. This evidence was objected to by counsel for the Commission and was excluded by the Examiner (R. 270, 277, 278, 281, 282, 284, 288).

A tentative report on further hearing was proposed on or about November 1, 1938 by Mr. Homer T. King, Special Examiner of the Interstate Commission. The Special Examiner, after setting forth the history of the proceeding, and describing the changes that had taken place in operating and other conditions connected with the placement of cars at the Staley plant, recommended that the Commission should find that since the issuance of the Commission's report of May 22, 1936 in *A. E. Staley Manufacturing Co. Terminal Allowance,* 215 I. C. C. 656, substantial changes had occurred in the methods of spotting cars in the Staley plant, and that the spotting service then being performed was in conformity with the principles announced in the Commission's report in *Propriety of Operating Practices—Terminal Services,* 209 I. C. C. 11, and that such service might be performed by the Wabash under its line-haul rate without an additional charge (R. 5).

The Commission in its report of May 6, 1941 in the case at bar said (R. 21) that an incomplete record had resulted from this limited reopening of this proceeding, and that the Commission on July 29, 1939 (nine months after the tentative report had been issued), on its own motion had again reopened the proceeding for further hearing concerning the operating or other conditions at the plant of the Staley Company with respect to the delivery or receipt of cars handled to or from its plant in Decatur.

No action, however, was taken by the Commission towards setting down the proceeding for a further hearing.

A charge for spotting cars at the Staley plant has been in effect since June 15, 1937. This charge is in addition to the line-haul rates paid by the Staley Company on traffic moving to and from its plant. Appellees in the years that followed 1937 had an opportunity of observing the practical effect of the establishment of this charge against the Staley Company, a charge which appellees established under the findings of the Commission in *A. E. Staley Mfg. Co. Terminal Allowance,* 215 I. C. C. 656. Appellees, after giving the matter further consideration, and not unmindful of the long delay that had characterized the proceedings before the Commission, reached the conclusion that the continued imposition of this charge against the Staley Company was unjustified (R. 435).

Appellees, furthermore, were not unmindful of the growth of truck transportation and of the efforts that were being made by the motor truck operators to obtain a larger part of the traffic moving to and from the Staley plant. Decatur is within trucking distance of many large cities. Motor trucks are handling traffic to and from the Staley plant and have been making every

effort to participate to a greater extent in the Staley Company's traffic. The trucks come into the plant area and pick up the traffic at points of loading. The Commission has not required the truck operators to make a charge for terminal services performed by them in transporting freight to and from points of loading and unloading within the Staley plant (R. 626, 627, 642-652).

Appellees, therefore, on November 10, 1939, filed tariff schedules to become effective on December 15, 1939, whereby they proposed to cancel the charge of $2.50 per car then being collected from the Staley Company for the placement of cars within its plant. The tariffs specifically provide that loaded cars received and empty cars for loading via appellees' railroads will be placed for loading or unloading, as the case might be, at the Staley plant, and that the established freight rates for transportation to and from Decatur lawfully on file with the Commission include such service (R. 861).

These tariff schedules were suspended by the Commission in *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill.* The Pennsylvania and the Baltimore & Ohio railroads did not join in these tariffs. At the hearing in this proceeding, however, neither the Pennsylvania nor the Baltimore & Ohio offered any objection to these tariffs (R. 475-499, 598-609).

Following the suspension of the tariff schedules of appellees, the Commission held a hearing in Decatur on April 23-25, 1940 in *Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill., and in Ex Parte 104, Part II, A. E. Staley Manufacturing Co. Terminal Allowance.* The record of this hearing is before this Court (R. 370-859). Four witnesses from the Commission's Bureau of Service testified at this hearing (R. 666-776). Their testimony was confined solely to a de-

scription of switching operations at the Staley plant. Not one of these witnesses dealt with the services which these appellees or other railroads customarily rendered shippers at Decatur or elsewhere on their lines in the receipt or delivery of traffic on team tracks or on industial sidings and spurs. Nor did any of these witnesses offer testimony dealing with the terminal services performed by appellees or other railroads at plants that compete with the Staley Company at Decatur or elsewhere.

The hearing developed that appellees make no charge against industries served by them at Decatur or at any other point on their lines of railroad for spotting services performed by them at such industries with one exception: the plant of the Staley Company at Decatur (R. 379, 458, 505, 506). Officers of the Staley Company and of the Staley Company's competitors testified that there is no soybean or corn-processing plant at which a charge is exacted by the railroads for spotting cars on the tracks of the industry (R. 552, 559, 563, 567, 625).

Officers of six processing plants, all competitors of the Staley Company, testified at the hearing (R. 544-575) respecting the location of their plants, the railroads serving those plants, the number of miles of track within the plants, the number of points of loading and unloading, and the switching services at those plants. Many of these plants are served by the appellees or some one of them. At not one of these plants is any charge made in addition to the line-haul rates for placing cars within the plant areas. Several of these plants are large plants (R. 544-546, 557, 558, 568-570). One of the plants, the plant at Argo, Illinois, is a larger plant than the Staley plant. The Argo plant has between 18 and 21 miles of trackage within the plant, and has from 20 to

25 places at which cars are spotted (R. 546). The Staley plant has 14.1 miles of trackage within the plant (R. 29). There are 18 places within the Staley plant at which cars are spotted. There are 4 principal points of loading and 5 of unloading, a total of 9 (R. 32, 34).

The testimony offered by appellees' operating officers, men of long experience in the practical operation of terminals (R. 397, 520, 592-593), showed that the switching of a given number of cars at the Staley plant is less burdensome and less expensive than the switching of the same number of cars at other industries and team tracks in the Decatur Switching District. Appellees call especial attention to the testimony on this point of C. A. Johnson, Superintendent of the Wabash Railroad at Decatur (R. 849-853); Charles Curran, General Yard Master of the Wabash Railroad at Decatur (R. 535-537), and T. K. Beach, Train Master of the Illinois Central Railroad (R. 405-409).

The Commission's report gives emphasis to the volume of the traffic moving to and from the plant of the Staley Company. In 1939 the Staley cars transported by all the railroads reaching Decatur aggregated 42,887 cars (R. 26). The record does not show the number of cars loaded and unloaded at the various points within the Staley plant during 1939. The record does show the number of cars loaded and unloaded at the various locations within the Staley plant in 1937 (R. 257-268) when 33,857 cars were spotted. There were 9,437 cars of grain, or 28 per cent of the total, unloaded at Elevator C in 1937 (R. 33). The coal unloaded at the coal dock aggregated 4,562 cars, or 13 per cent of the total (R. 34). There were 3,321 cars loaded at the feed warehouse and elevator. Soybean products loaded at Building No. 48 in 1937 aggregated 4,245 cars (R. 86). Products loaded at Buildings Nos. 16 and 20 amounted to 3,505 cars in 1937 (R. 45).

Mr. Commissioner Mahaffie, dissenting from the Commission's report in the case at bar, in which dissent he was joined by Mr. Commissioner Alldredge, said (R. 46):

> "If the 40 elevators, mills, and other buildings constituting the plant of the Staley Company were each owned and operated by a separate concern, the railroads would be required to serve each of them at the line-haul rate. The real difficulty here is size. If the size of an industry is hereafter to determine whether it may or may not have terminal service without extra payment, we should immediately establish some uniform standard so that the permissible limits may be known."

The Commission in its report comments at length on the effect of switching arrangements on carriers' revenues (R. 22-27). Mr. Commissioner Mahaffie in his dissenting opinion thus deals with this matter (R. 45-46):

> "The suspended schedules, in my opinion, have been justified. The result of our attempting to save these railroads from what we considered their profligacy is told in the report as to one of them as follows:
>
> > 'It follows that substitution of the existing arrangement for the pool arrangement caused the Illinois Central to lose $92,888.80 on Staley traffic handled during the years 1938 and 1939, while, if the old allowance arrangement had been substituted for the pool arrangement, the resulting losses in Illinois Central revenue would have been but $40,406, based upon an allowance of $2 per car.'
>
> "The others, except perhaps the Wabash, fared much the same. The allowance was the carriers' plan intended to meet, at the least possible cost, their carrier obligations. We held it bad. The pool plan was devised to try to meet our objections. Our representatives are said to have discouraged its use. Consequently, the present more costly plan is now being used. In this way the procedure intended by

us to cut railroad expenses and to increase net earnings has had exactly the opposite effect."

On May 6, 1941 the Commission made its report in the two proceedings referred to (*A. E. Staley Manufacturing Co. Terminal Allowance,* 245 I. C. C. 383, R. 17-46). The Commission deals at length with the history of the terminal services at the Staley plant and the circumstances and conditions surrounding the handling of traffic to and from points of loading and unloading within the plant. It makes certain findings of fact and conclusions (R. 42, 43), some of which, as we shall later point out, are without any support in the facts stated in the report and without any foundation in the evidence.

On the same date the Commission entered its order in *I. & S. Docket No. 4736, Switching Charges in Decatur, Ill.,* and required these appellees to cancel the schedules on or before June 20, 1941, which had been suspended in that proceeding and in which these appellees proposed to eliminate the switching charge against the Staley Company (R. 46).

Thereafter appellees and the Staley Company filed at various times with the Commission their petitions for vacation of the order of May 6, 1941 and for reconsideration (R. 47-79). The Commission on July 31, 1941 denied all these petitions.

The complaint was filed in the lower court on June 1, 1942 (R. 1). The case was heard by that court on April 26, 1943 (R. 121-122). The court rendered its opinion on July 14, 1943, in which it held that the Commission's order of May 6, 1941 was invalid and that the prayer for an injunction should be allowed (R. 134-139). Circuit Judge Evans dissented. The court on the same day entered its Findings of Fact and Conclusions of Law (R. 139-143). Circuit Judge Evans dissented not from these Findings but from the conclusion that the plaintiffs (the

appellees here) were entitled to a decree (R. 143). The final decree was entered by the court on July 14, 1943, setting aside and annulling the order of May 6, 1941 and permanently enjoining the enforcement of that order (R. 143-144).

SUMMARY OF ARGUMENT.

The error of law that vitiates the order in the case at bar is the Commission's failure to observe the statutory standards which govern its action. When the facts in a case give rise to a question not only under Section 1, requiring just and reasonable rates and practices, but also under Section 2, forbidding unjust discrimination, and under Section 3, forbidding undue preference or prejudice, the Commission may not close its eyes to the issues under Sections 2 and 3 and proceed over a period of many years as though those sections did not exist.

These appellees have been required to impose a spotting charge against the Staley Company for the placement of cars within the Staley plant in Decatur pursuant to the Commission's orders ever since June 15, 1937. Appellees make no similar charge for switching any other industry or team track in the Decatur Switching District or at any other point on their lines. No competitor of the Staley Company located at Decatur or elsewhere pays such a charge.

These matters were brought to the Commission's attention through the years by petitions filed by the Staley Company, by tariffs filed by these appellees, and by the testimony presented by both the Staley Company and these appellees at hearings before the Commission, in briefs and upon argument.

The Interstate Commerce Commission, nevertheless, for more than six years took no steps towards investi-

gating the spotting services rendered by these appellees at other industries and on team tracks in the Decatur Switching District, or elsewhere on their lines, or at plants competing with the Staley Company. Appellees, recognizing the inequality in treatment to which the Staley Company was being subjected, proposed by tariffs filed on November 10, 1939, to eliminate the spotting charge against the Staley Company. These tariffs were suspended by the Commission in *I. & S. Docket No. 4736, Switching Charges at Decatur, Ill.*, the case at bar. The Commission's order of May 6, 1941, disapproved of this method of eliminating an admitted inequality. But the Commission itself never undertook any investigation for the purpose of developing facts that would enable it to remove the inequality in a way that it considered would be proper and lawful.

Appellants in their brief admit that the Staley Company has been subjected to an inequality in treatment (pp. 66, 80). They stamp this inequality in treatment, however, as a "temporary" one. An inequality in treatment extending over a period of more than six years cannot be said to be a temporary one. The Interstate Commerce Act, does not distinguish between "temporary" and "permanent" inequality. This case in the last analysis comes down to a matter of simple justice.

Appellants take the position that the Commission, in reaching a determination whether the spotting services at a given plant exceed the carrier's legal obligation under its line-haul rates, is not required to go beyond an investigation of the services as rendered at such plant. But a determination of the question whether those spotting services are excessive, whether they are over and above those that are ordinarily and customarily rendered, and beyond the carrier's legal obligation under its line-haul rates, requires not only an examination of the spotting services actually rendered at a particular

plant, but a comparison of those services with the spotting services at other plants and on team tracks in the same locality. The Commission in many cases has said that one test whereby it may be determined where a particular service exceeds a carrier's line-haul obligation is the customary service extended to the rank and file of industries, including competing industries, in the same general district and in the same rate group, and that another test is the service rendered in switching team tracks in the same locality. Thus the Commission failed to apply not only the statutory standards which govern its actions, but the principles which it itself has laid down for the determination of these questions.

The testimony of appellees' operating officers, men of long experience in the operation of terminals, shows without contradiction that the services rendered in switching a given number of cars at the Staley plant are less burdensome and less expensive than those rendered in switching the same number of cars at other industries and team tracks in the Decatur Switching District. Thus the appellees, when they applied the tests laid down by the Commission itself, found no justification for the inequality in treatment which they had been required for more than six years to impose upon the Staley Company under the orders of the Commission.

Where one industry has been singled out for exceptional and inequitable treatment over a long period of time, where spotting charges are required under the orders of the Commission to be assessed against that industry but against none of its competitors in the same locality, or elsewhere, and where issues are raised under Sections 2 and 3, the Commission cannot make a fair determination of whether the spotting services at that industry exceed the carrier's legal obligation, until it has compared those services with the services customarily and ordinarily rendered at other industries, in-

cluding competing industries, and on team tracks in the same locality and in the same territory. And if the record is lacking in sufficient facts to enable it to reach a fair and just determination of the question, the Commission, through the exercise of the broad powers of investigation possessed by it, can develop all pertinent and necessary facts.

It was inevitable that the Commission's course of action through the years in this litigation should lead to the very inequality in treatment that the Act was intended to prohibit and prevent.

The Commission, following the opinion and decree of the lower court in the case at bar, instituted an investigation on July 31, 1943, with respect to terminal services at four plants of the Staley Company's competitors which were named by the lower court in its opinion. This investigation is referred to in the Commission's Fifty-seventh Annual Report, extracts from which appear in Appendix II of appellants' brief. This investigation was plainly responsive to the opinion of the lower court and is a recognition of the truth and justice of the lower court's opinion and decree.

The Commission, furthermore, has recognized by this investigation that Sections 2 and 3 of the Act exist and that these sections must be applied and enforced in a general investigation instituted by the Commission on its own motion. But the inequality in treatment against the Staley Company is continued, notwithstanding this investigation. Failure of the Commission to take any action towards eliminating the charge against the Staley Company during the pendency of this investigation requires these appellees to continue the spotting charges against the Staley Company. Thus the Staley Company is left helpless in the interval, as it has been left helpless during the last six years.

It was arbitrary action on the part of the Commission, under the circumstances disclosed by this record, to require appellees to continue a spotting charge against the Staley Company and to take no steps for more than six years to determine whether the continuance of the charge resulted in violations of Sections 2 and 3, and if so, how those violations should be removed. When the appellants admitted that the Commission's action has resulted in inequality of treatment, this was tantamount to saying that it was arbitrary.

The lower court recognized the principle that administrative questions of preference and prejudice are to be determined in the last analysis by the Commission. It left such questions to the determination of the Commission in accordance with the statutory standards which govern its action. Appellees did not seek in the lower court a decree that would permanently remove the spotting charge from the Staley Company or that would require the imposition of a similar charge at the plants of the Staley Company's competitors. Appellees ask that the decree of the lower court be affirmed to the end that the Commission may be in a position to reconsider the whole situation in accordance with the provisions of the statute.

The Commission in its report in the case at bar made certain findings of fact and conclusions. The question whether these findings and conclusions are supported by the evidence can be reached only when it is clear that the statutory standards which govern the Commission's action have been applied.

Appellees have shown, however, that certain subsidiary findings of fact and conclusions are without any support in the facts stated in the report and without any support in the record, and are in fact contrary to the facts in the record. These findings and conclusions are similar to those made in the earlier cases decided by the

Commission. Appellees have called attention to them for the purpose of showing not only that they are without support, but that the Commission made these findings in a formal and perfunctory way. The Commission merely adopted the findings it had used in the earlier cases, failing to consider that the facts and issues in those cases were wholly different from those in the case at bar.

The Commission has failed all through this litigation to bend its mind to the problems confronting it. It has failed to follow the statutory standards which control its action and the principles which it itself has evolved for the purpose of determining whether a given service exceeds a carrier's legal obligation. The effect of the lower court's decree is simply to require the Commission to bend its mind to the issues and to consider the factors that must be considered if justice is to be done in such a case. As the lower court put it in its opinion (R. 138):

> "To give full meaning to the Act and to translate the intention of Congress into equitable application requires a consideration of the Act as a whole. * * *"

ARGUMENT.

I.

The Commission failed to apply the statutory standards which govern its action and which determine the rights of parties before it.

The Commission has proceeded throughout all this litigation as if Sections 2 and 3 were nonexistent, in the face of the fact that issues were raised under these Sections. Appellants now concede that the Commission's order has resulted in an inequality in treatment.

The fundamental error of law into which the Commission fell in the case at bar is its assumption, per-

sisted in over a long period of time, that it was free from the statutory standards which govern its action and could apply only those standards that it chose. The Commission since May 22, 1936, the date of its decision in *A. E. Staley Mfg. Co. Terminal Allowance,* 215 I. C. C. 656, has dealt with the spotting services at the Staley plant as though those services were performed in a vacuum, and bore no possible relation to the services performed by appellees at other plants and on team tracks in Decatur and elsewhere on their lines.

The Commission has proceeded on the theory that it could separate and segregate the Staley Company from all other industries and from shippers on team tracks in Decatur and elsewhere and could require appellees to impose a spotting charge against the Staley Company without regard to the question whether such action resulted in unjust discrimination in violation of Section 2 or in undue prejudice in violation of Section 3.

The heart of the Interstate Commerce Act is found in Section 1, requiring reasonable rates and practices, in Section 2, forbidding unjust discrimination, and in Section 3, forbidding undue prejudice and preference. Whether in a given case the Commission is called upon to consider an issue under one or all of them depends upon the facts and the issues raised by the parties. The first question that presents itself in a case of this kind is one arising under Section 1(5) and (6): the extent of the carrier's legal obligation under its line-haul rates.* But these cases may also involve questions arising under Sections 2 and 3.

The Commission was created by Congress to apply and enforce not only Section 1 but Sections 2 and 3 of the

* *Interstate Commerce Acts Annotated,* Section 1(5), Note 521, and Section 1(6), Notes 666-671.

Act. This Court has said * that the great purpose of the Interstate Commerce Act, while seeking to prevent unjust and unreasonable rates,

> "was to secure equality of rates as to all and to destroy favoritism. * * * It was to compel the carrier as a public agent to give equal treatment to all. * * *"

This Court has more than once held ** that a charge may be perfectly reasonable under Section 1, yet create an unjust discrimination and unreasonable preference under Sections 2 and 3.

Thus the Commission cannot close its books when it has reached a determination under Section 1 whether a particular service comes within the scope of the carrier's legal obligation. For questions under Sections 2 and 3 may be present, dependent of course upon the facts. Where they are present, as in the case at bar, the Commission may not, even in an investigation instituted on its own motion, ignore them. Moreover, the order of May 6, 1941, here assailed, was issued in an investigation and suspension proceeding. The Commission holds that such a proceeding presents issues not only under Section 1 but under Sections 2 and 3. * * *

Appellees have set out in their Statement (p. 4) the history of this litigation. Appellees there refer to the petitions filed with the Commission by the Staley Company, to the tariffs filed with the Commission by appellees, to the testimony offered by officers for both the Staley Company and appellees at the hearing in the case at bar, all of which brought home to the Commission not once but many times the inequality in treat-

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* *New Haven R. R. Co.* v. *Inter. Com. Com.*, 200 U. S. 361, pp. 391, 392.

** *Inter. Com. Com.* v. *B. & O. R. Co.*, 145 U. S. 263, p. 277; *American Express Co.* v. *Caldwell*, 244 U. S. 617, p. 624.

*** *Chicago Board of Trade* v. *I. C. R. R. Co.*, 26 I. C. C. 545; *Class Rates Between Stations in Louisiana*, 33 I. C. C. 302; *The Excelsior and Flax Tow Cases*, 36 I. C. C. 349.

ment to which appellees have been required to subject the Staley Company over a long period of time. That the Commission deliberately closed its eyes to issues of unjust discrimination and undue prejudice is shown by the fact that at the hearing held in June, 1938 (R. 242-370), all evidence offered dealing with the spotting services at the plants of the Staley Company's competitors in Decatur and elsewhere was objected to by Commission's Counsel and was excluded by the Examiner (R. 270, 277, 278, 281-288).

Appellants in their brief admit that the Staley Company has been subjected to inequality in treatment as a result of the Commission's action in this litigation (pp. 66, 80). While they seek to soften this inequality by calling it a temporary one, an inequality that has existed for more than six years clearly oversteps the bounds of being temporary. The fact of the matter is that the Commission has proceeded throughout this long period of time on the assumption that it was not required to do anything about the matter.

The facts respecting the history of this litigation and the various steps that have been taken therein as set out in appellees' Statement (p. 4), should have challenged the Commission's attention. They put the Commission upon notice that at the Staley plant these appellees had been required over the years to make a charge for spotting cars, but that they had not been required to make a similar charge against competitors of the Staley Company located in Decatur and elsewhere, and that no competitor of the Staley Company paid such a charge.

From whatever aspect the matter be approached, it is clear that the Commission has assumed through the years that it could treat Sections 2 and 3 of the Act

as nonexistent, that it could require appellees by its orders to continue over a six-year period an inequality in treatment against the Staley Company, and that it was not required to take any action looking towards the removal of that inequality. The Commission after the entry of the decree of the lower court instituted an investigation respecting spotting services at the plants of those competitors named by the lower court in its opinion. But it is clear that the institution of this investigation was responsive to the court's opinion and decree and would not have been instituted had it not been for that opinion and decree.

Appellants go so far as to argue (p. 63) that the Interstate Commerce Act forbids only carriers from committing a forbidden discrimination and preference. They have forgotten what this Court said in *Inter. Com. Com.* v. *C. R. I. & P. Ry. Co.*, 218 U. S. 88 (p. 102):

> "* * * From whatever standpoint the powers of the Interstate Commerce Commission may be viewed, they touch many interests, they may have great consequences. They are expected to be exercised in the coldest neutrality. The Commission was instituted to prevent discrimination between persons and places. It would indeed be an abuse of its powers to exercise them so as to cause either. * * *"

Appellees submit that if the Commission had recognized that it was its duty to apply not only Section 1 but Sections 2 and 3, to consider not only the spotting services at the Staley plant but how those services compared with the spotting services at other plants and on team tracks in Decatur and at the plants of the Staley Company's competitors, the Commission might have reached a different conclusion in the case at bar. The Commission might well have found that the spotting services at the Staley plant, when considered not only in and of themselves, but when compared with the spot-

ting services rendered at other plants and on team tracks, did not exceed those which the railroads customarily and generally render or can be required to render under their line-haul rates. And the responsibility resting upon the Commission of giving consideration to such comparisons was all the greater because of the long period of time during which the Staley Company alone of all companies engaged in the same business had been subjected to the payment of a spotting charge. If there was any doubt in the Commission's mind whether the evidence respecting comparisons was adequate, the Commission had the power under the Act (Sections 13(2) and 15(1) to make whatever further investigation of the facts it deemed necessary.

The issues under Sections 2 and 3 of the Act were inherent in this proceeding. The very history of the case, the manner in which the case was dealt with by the Commission, gave rise to these issues. They could not be escaped or avoided. And the Commission fell into a plain error of law in assuming that under the facts it could ignore the provisions of Sections 2 and 3.

The Commission dealt in the following language with the testimony (R. 544-572) respecting the switching services rendered at the plants of the Staley Company's competitors (R. 42):

> "Considerable evidence was introduced showing spotting is performed without charge in addition to the line-haul rates at various plants, some of which compete with the plant of the Staley Company. The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did, it would only show the probability of the existence of unlawful practices at such plants and the need for investigations in connection therewith."

Appellees submit that the Commission here recognized that justice could be done only by investigating the practices at other plants. It should be borne in mind that the Commission in dealing with such questions is not required to indulge in probabilities. The Commission under the broad powers it possesses under Section 13(2) and of Section 15(1) of the Act with respect to the institution of investigations on its own motion, has the power to reduce speculation and probabilities to a certainty. This it should have done in the case at bar before entering an order the direct effect of which was to continue an admitted inequality against the Staley Company.

Appellees direct attention to what the District Court said in its opinion respecting this finding of the Commission (R. 137):

> "While the Commission says that the evidence does not satisfactorily show that the conditions at other plants are substantially similar to those at the Staley plant, yet the only evidence in the record on this subject very strongly tends to show similarity. By its further statement that if it did it would only demonstrate the need for investigations at other plants, it appears that the Commission was of the belief that each case must stand on its own bottom and be considered by the Commission independent of any other and without relation to the palpable inequities bound to flow from an order not applicable to all similarly situated. We think this too narrow a view. * * *"

But this narrow view, this position taken by the Commission, that under no circumstances is it required to extend its investigations beyond the four corners of a plant area in order to determine whether the spotting services at that plant are in excess of a carrier's legal obligation, is urged by appellants in their brief. They argue (pp. 61-62) that the Commission is required to

look only to the "evidence respecting the operation at (each) plant," citing *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, page 411. The Court in that case said (p. 411):

> "The Commission properly held that each case must be decided upon the circumstances disclosed. It accordingly examined the evidence respecting the operations at the plants of each of the appellees and made its findings with respect to each upon the evidence in the record. * * *"

No justification for the narrow view taken by appellants can be extracted from what this Court here said. Of course each case must be decided upon the circumstances disclosed. But those circumstances will differ as the cases differ. Facts will be present in one case that are not present in another.

It only requires a reading of the Commission's opinion in the cases that were before this Court in *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402,* and the Court's opinion in that case to understand that the issues were entirely different from those in the case at bar. These earlier cases before the Commission and this Court had no such history, no such background of facts, and no such issues as the case at bar has.

The lower court recognized the distinction between the case at bar and the decision of this Court in *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, when it said (R. 138):

> "We think that *United States* v. *American Sheet & Tin Plate Co., supra,* is not to be deemed authority contrary to the view here expressed. While it is true that the Supreme Court there said in affirm-

* *American Sheet & Tin Plate Co. Terminal Allowance*, 209 I. C. C. 719; *Allegheny Steel Co. Terminal Allowance*, 209 I. C. C. 273; *Pittsburgh Plate Glass Co. Terminal Allowance*, 209 I. C. C. 467; *Weirton Steel Co. Terminal Allowance*, 209 I. C. C. 445; *West Leechburg Steel Co. Terminal Allowance*, 210 I. C. C. 213; *Pittsburgh Plate Glass Co. Terminal Allowance*, 210 I. C. C. 527.

ing the order of the Commission that the Commission had properly held that each case must be decided upon the circumstances disclosed, yet the question of discrimination here presented was not before the Court. In that case and in *United States v. Pan-American Petroleum Corp., supra,* the Court was dealing with a number of like orders in relation to a group of competing industries and no question of one industry having received different treatment from all others was before the Court."

In other words, a consideration of the switching services at other industries becomes a part of the "circumstances disclosed."

It will be seen from Appendix II attached to this brief that the Commission within a comparatively short period of time in 1935 and 1936 handed down many decisions involving allowances to iron and steel companies. No question of discrimination could arise when the Commission within a comparatively short time dealt with the matter of allowances and spotting services to competing industries. The terminal services at the plants, moreover, had been investigated by the Commission in 1931 and 1932, but its reports were not issued until 1935 and 1936. All during this time these industries, as shown by the findings and decisions later entered, were receiving a service over and above the service the railroads were legally obligated to render and were receiving a refund from the published tariff rates.

Yet appellants in their brief argue in substance that at no time would it have been fair for the Staley Company to have been placed on a plane of equality with its competitors pending the results of investigation by the Commission, because the Staley Company during the period of investigation would have received a remission from the published tariff rates. Appellees submit, however, that if the course pursued by the Commission from 1931 to 1936 in the handling of these matters was right,

such a course would have been right in the succeeding years. If the Commission instead of selecting one industry out of many in the field, and requiring the railroads to impose a spotting charge against that industry, had waited until it had made an investigation of the services rendered at competing plants and on team tracks in the same locality and in the same rate group, the Commission might well have found that the services in question did not exceed the services that the railroads are customarily and generally rendering under their line-haul rates.

The facts and the issues in the case at bar, the action taken over the years by the Commission with respect thereto, stand out in marked contrast to the facts and the issues in the cases that the Commission decided in 1935 and 1936 and which were later considered by this Court, and to the procedure followed by the Commission in its consideration of these cases.

Appellants state (p. 61) that the lower court found that if a spotting charge is to be imposed upon the Staley Company, the spotting charge must be imposed upon the plants of the claimed competitors of the Staley Company. The court made no such finding. What the court held in substance was that the time had come when the spotting charge should be taken off the Staley plant pending a further investigation of the services at that plant and the services at plants of the Staley Company's competitors.

Appellants suggest that if the principle announced by the court should be established (a principle which the court did not announce) it would require the Commission to order a spotting charge against all industries proved to be competitors of the one involved in the case before it without an investigation or hearing. But this conclusion is purely a fanciful one. Each industry would, of course,

be entitled to a full and fair hearing with respect to the spotting services at its plant. But that hearing would present the question whether the spotting services at such plant were excessive when compared with the spotting services ordinarily rendered by the railroads in the same locality or in the same rate group, including the spotting services not only at other industries but on team tracks. The purposes of the Interstate Commerce Act cannot be served by action on the part of the Commission which eliminates what the Commission believes to be a violation of Section 1, but which action at the same time creates violations of Sections 2 and 3. The Commisson has ample power to make whatever investigations are necessary to insure that any orders that it enters will meet the standards laid down not only in Section 1 but in Sections 2 and 3.

It is impossible to reconcile the position taken by the Commission in the case at bar that no issues under Sections 2 and 3 present themselves in a case of this kind with the position it took in a long line of cases* in which it held that the railroads were chargeable with unjust discrimination or undue prejudice because of their refusal to treat alike, so far as terminal services or allowances were concerned, industries competing with one another.

Yet appellants now argue in their brief that the Commission may require the railroads to do the very thing that the Commission in these cases found that the railroads would not be permitted to do. The Commission here recognized that these cases not only present the

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* *Alan Wood Iron & Steel Co.* v. *Pennsylvania R. R. Co. et al.*, 22 I. C. C. 540, p. 543; *Westport Stone Co.* v. *C. C. C. & St. L. Ry. Co.*, 48 I. C. C. 637; *National Malleable Castings Co.* v. *Pittsburgh & Lake Erie R. R. Co. et al.*, 51 I. C. C. 537, p. 538; *Empire Steel & Iron Co.* v. *Dir. Gen.*, 56 I. C. C. 158, p. 189; *Donner Steel Co.* v. *D. L. & W. R. R. Co. et al.*, 57 I. C. C. 745; *Riter-Conley Mfg. Co.* v. *Dir. Gen.*, 58 I. C. C. 327; *Carey Mfg. Co.* v. *Dir. Gen.*, 59 I. C. C. 640, p. 647; *Jackson Iron & Steel Co.* v. *Dir. Gen.*, 91 I. C. C. 201, p. 211.

question of where "transportation" begins and ends, but may, dependent upon the facts, present questions under Sections 2 and 3.

In one of these cases (*Alan Wood Iron & Steel Co.* v. *Pennsylvania R. R. Co. et al.*, 22 I. C. C. 540), the Commission said (p. 545):

> "That it is the carrier's duty to accord equality of service and equality of rates to all under substantially similar circumstances and conditions is beyond question. A carrier may not perform a switching service for one plant and decline to perform it at a competing plant in the same general territory on the ground that it is more convenient to perform the service at one plant than at the other, or because it has been customary to do it at one and not at another. * * *"

The Commission cannot determine whether equality of service and equality of rates have been achieved unless it bears in mind the standards embodied in Sections 2 and 3 of the Act, and applies those standards to the facts and issues in the case at hand.

One case involving discrimination between competing industries deserves particular mention. In *Carey Mfg. Co.* v. *Dir. Gen.*, 59 I. C. C. 640, the Commission had before it the complaint of the Carey Company that the allowance paid to it for spotting cars at its plant was less than the actual cost of the service to the Carey Company, and that the railroads were rendering a similar spotting service for competing shippers in the same district without charge in addition to the line-haul rates. The Commission said in part (pp. 642-3):

> "* * * Aside from any question of the extent of a carrier's legal obligation as to the delivery of carload traffic without charge in addition to the line-haul rates, if unjust discrimination or undue prejudice is found to result from the failure or refusal

of the carrier to perform the spotting service for one shipper or to make that shipper a proper allowance therefor, while it renders a like spotting service for other and competing shippers, we may require by order the removal of unjust discrimination or undue prejudice. * * *"

The Commission found (p. 645) that the legal obligation of the railroad under its line-haul rate did not require it to spot complainant's cars at the points of loading and unloading within the plant. But the Commission made the significant statement that although the spoting service be not regarded as a service contemplated under the line-haul rate, discrimination or prejudice may exist through the performance of a similar service for others. And the Commission, making a comparison of the spotting services at the complainant's plant with the spotting services at the plant of a competitor located but a short distance from the complainant's plant, (the very kind of comparison which the Commission in the case at bar has failed and refused to make and which the appellants in their brief say it is not obliged under any circumstances to make) found that the Carey Company was subjected to undue prejudice. The Commission here did not construe the law in such a way as to create two violations of law by the elimination of one alleged violation. And it must be borne in mind that through the broad powers of investigation possessed by the Commission (Sections 13(2) and 15(1)), the Commission can develop all the facts in a given situation that will enable it to dispose at one time of all the issues that present themselves.

The holding in *Allegheny Steel Co.* vs. *Dir. Gen.*, 60 I. C. C. 575, was similar to the holding in the case appellees have just discussed. The Commission there found that it was not unreasonable for the railroad to refuse to make an allowance to the complainant, but

that the failure either to perform the switching service or make an allowance subjected the complainant to unjust discrimination as between it and similarly situated competitors in the Pittsburgh rate district for whom such services were performed without additional charge or to whom allowances were made.

The railroad later made an allowance to the Allegheny Steel Company. The lawfulness of this allowance was considered by the Commission in *Allegheny Steel Co. Terminal Allowance,* 209 I. C. C. 273. The Commission there held that the payment of an allowance was unlawful. But it is of the greatest importance to observe that the Commission on or about the time it decided this case (June 7, 1935), decided a great many other cases involving terminal allowances then being granted by railroads to steel companies in the Pittsburgh rate district, as well as to steel plants in other rate districts. (Appendix II.)

There is another aspect of the Commission's action in the case at bar which deserves consideration. Both the Commission and the Courts have recognized that it has long been the custom of railroads in this country to receive and deliver carload freight on spur tracks leading to private industries at convenient points for loading and unloading, without imposing any charge therefor in addition to the line-haul rates.*

We have, therefore, uniformity in the application of the line-haul rates in this country, under which such rates include the terminal services connected with the placing of cars at points of loading and unloading within plant areas at origin and destination. There are exceptions to this practice, but they for the most part

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* *Car Spotting Charges,* 34 I. C. C. 609, p. 616; *Associated Jobbers of Los Angeles* v. *Atchison, T. & S. F. Ry. Co.,* 18 I. C. C. 310, affirmed, *Los Angeles Switching Case,* 234 U. S. 294; *Propriety of Operating Practices—Terminal Services,* 209 I. C. C. 11, p. 32; *United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402, p. 409.

are those which have been made by the Commission in its decisions, and those where the industry, for reasons of its own, prefers to perform the switching service by its own engines.

What was the effect of the Commission's order in the case at bar in the light of the custom prevailing in this country respecting the spotting of cars on industry tracks? It was to separate the Staley Company from competing industries and other industries in Decatur and elsewhere, to place the Staley Company in one category and competing industries and other industries in another, to require the continuance of a charge against the Staley Company for spotting services when no charge is assessed against the Staley Company's competitors or other industries at Decatur or at any other points reached by appellees, and when no charge is assessed against the competitors of the Staley Company located on other railroads. It ought to be clear that when such an exception is carved out by the Commisson from the prevailing custom, the justification for such exceptional treatment, for such an inequality, should be made plain. A report of the Commission making any such exception to the general rule ought to show on its face that the Commission has applied all the standards laid down in the Act that govern its action, and that it has given due consideration to all the factors involved. This the Commission failed to do in the case at bar.

Appellants state in their brief (p. 78) that in many cases the Commission does not know of the existing inequities, that those who encounter inequities know of their existence and complain to the Commission, but that the Staley Company and appellees filed no complaints with the Commission. But in the case at bar the Commission was not once but many times advised of the existing inequities, inequities, moreover, brought about not by the action of the railroads but by the compulsion

of the Commission. Those who encountered unequal treatment, and those who were required to mete out unequal treatment, complained to the Commission not once but many times. But their complaints fell upon deaf ears. The Commission knew about the existing inequities but failed and refused to do anything about them.

Appellants state that the inequalities complained of can be removed in three ways: (1) by the voluntary action of the carriers in filing their tariffs; (2) by complaint to the Commission, filed by either the Staley Company or appellees; or (3) by action of the Commission on its own motion.

It is plain, however, that it is beyond the power of appellees to remove the inequalities complained of by imposing through the publication of tariffs a similar charge on the Staley Company's competitors. This method presupposes that appellees switch the plants of each and every one of the competing industries and are in a position to control the publication of spotting charges at such plants. This is not the case, however. Take, for example, the plant of the Corn Products Refining Company at Argo, Ill. This plant is switched by the Belt Railway (R. 546-549). The line-haul railroads in Chicago reach the Argo plant through the medium of switching absorptions; that is to say, they provide in their tariffs that they will absorb the switching charges of the Belt Railway (R. 549). It would be of no avail for the appellees, the Wabash and the Illinois Central, to file tariffs naming a switching charge against the plant at Argo, while all the other railroads that reach Chicago continued to apply their line-haul rates to and from points of loading and unloading within the plant. The same situation exists at the plant of the American Maize Company at Roby, Ind. (R. 557-559), at the plant of the Union Starch & Refining Company at Granite City, Ill. (R. 568-570), as well as at other plants.

If the course here suggested by appellants were followed by appellees, it would simply mean that the traffic would move via the lines of carriers not publishing such tariffs, and the inequality would remain.

Appellants suggest that the inequalities complained of could be removed by a complaint to the Commission, filed either by the Staley Company or the appellees. But it was not necessary for the Staley Company or appellees to file such a complaint. In the *first* place it should be borne in mind that *Ex Parte 104, Part II, Terminal Services,* was a proceeding instituted by the Commission on its own motion, and in the *second* place the Commission well knew from the petitions filed in that proceeding by the Staley Company, from the tariffs filed by appellees and suspended in *I. & S. Docket No. 4736, Switching Charges at Decatur, Ill.,* from the testimony presented at the joint hearing in both cases, and from the briefs and arguments, that appellees had been required to impose upon the Staley Company an inequality in treatment. No additional or different complaint was required to lay the facts before the Commission, and to bring home to the Commission this inequality in treatment. The Commission should have applied the principles that it has so many times announced: that technicalities will not be permitted to defeat the ends of justice, that it is not over-exacting with respect to the form or the nature of the pleadings, that it looks to the substance of the complaint rather than to the form, and that even though a complaint may be artificial in form, it is sufficient if it contains the essential averments of a complaint.*

Appellants here in effect argue that the shadow rather than the substance should control.

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* *Memphis Freight Bureau* v. *St. L. S. W. R. R. Co.*, 18 I. C. C. 67, p. 69; *United States Leather Co.* v. *S. Ry. Co.*, 21 I. C. C. 323, p. 324; *Stuarts Draft Milling Co.* v. *S. Ry. Co.*, 31 I. C. C. 623, p. 724; *Wasatch Coal Co.* v. *Dir. Gen.*, 68 I. C. C. 118, p. 120; *Tovrea & Co.* v. *Dir. Gen.*, 81 I. C. C. 583; *Fork Mountain Coal Co.* v. *C. N. O. & T. P. Ry. Co.*, 206 I. C. C. 106, p. 110.

Appellants say (p. 79) that the third method, action by the Commission on its own motion, would relieve the Staley Company and the carriers from preparing and submitting evidence in support of the issue, would leave them free to oppose the Commission's efforts, and place all the burden of investigation upon the government. This is a wholly erroneous statement. Both the carriers and the Staley Company took an active part in the submission of evidence in the case at bar, and all the burden of investigation was not placed upon the government. Furthermore, the parties in a proceeding instituted by the Commission on its own motion still have the right to oppose the Commission if they think that the Commission is wrong.

There were, moreover, various methods at hand by which the Commission could have developed many facts that would have aided it in any investigation of the spotting services at other plants, including the plants of the Staley Company's competitors. The Commission could, through the medium of a prehearing conference, specific provision for which is made in its Rules of Practice* call together the interested railroads and the shippers, determine the plants that were of such size as to warrant an investigation, and develop ways and means for expeditiously ascertaining the facts. The task is no more an impossible task than that which the Commission has encountered in the cases involving, for example, the class rates in the various territories,** the general level of all rates in the country,*** and the in-

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* *Rule 68 of the General Rules of Practice.*

** *Southern Class Rate Investigation,* 100 I. C. C. 513; *Eastern Class Rate Investigation,* 164 I. C. C. 314; *Western Trunk Line Class Rates,* 164 I. C. C. 1.

*** *Fifteen Per Cent Case,* 1931, 178 I. C. C. 539; *General Rate Level Investigation,* 1933, 195 I. C. C. 5; *Emergency Freight Charges,* 1935, 208 I. C. C. 4; *General Commodity Rate Increases,* 1937, 223 I. C. C. 657; *Fifteen Per Cent Case,* 1937-1938, 226 I. C. C. 41; *Increased Railway Rates, Fares, and Charges,* 1942, 248 I. C. C. 545, 255 I. C. C. 357.

vestigations made pursuant to the so-called Hoch-Smith Resolution.*

Another example will suffice to show what means the Commission has of investigating the facts in an expeditious and economical manner. The Commission has recently asked many railroads in Illinois territory, including appellees, to make a detailed investigation of the switching services at certain plants engaged in the processing of corn or soybeans, and to report to the Commission the results of the investigations. There is a sharp contrast between what the Commission has done in the way of conducting an investigation respecting services at competing plants since the court below entered its decree in the case at bar, and what the Commission did in the preceding years. This gives emphasis to what this Court once said (*Inter Com. Com.* v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88 (p. 103) that—

> "If the problems that are presented to it (the Commission) are complex and difficult, the means of solving them are as great and adequate as can be provided."

And there is still a sharper contrast between what the Commission did in the earlier investigations in *Ex Parte 104, Part II, Terminal Services*, and the case at bar. The Commission did not in 1931 and 1932 investigate the allowances to one lone steel mill, and require the railroads serving that mill to charge for spotting services at the mill, and then stand idly by to await the filing of complaints of discrimination. The Commission investigated allowances and terminal services at many iron and steel mills, not only in the Pittsburgh district but in other districts. It entered orders dealing with

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* *Grain and Grain Products Within Western District*, 164 I. C. C. 619; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 284 U. S. 248; 205 I. C. C. 301, 229 I. C. C. 9; *General Petroleum Investigation*, 171 I. C. C. 286.

those allowances and services within a comparatively short period of time (Appendix II). What was practicable and workable with respect to the steel industry was practicable and workable with respect to the corn and soybean processing industry.

Appellees took the only practicable and the only effective action within their power to remove the inequality against the Staley Company when they filed on November 10, 1939 tariffs in which they proposed to cancel the charge of $2.50 per car then being collected from the Staley Company for the placement of cars within its plant.

Appellees proposed this method of eliminating the inequality because they were convinced that when the standards established by the Commission were applied to the spotting services at the Staley plant, no justification could be found for a continuance of a charge for those services. Appellees could not find, in comparing the spotting services at the Staley plant with those at other plants, especially Staley's competitors, and on team tracks in Decatur, that the services at the Staley plant exceeded those customarily performed at other industries and on team tracks.

The method proposed by appellees for eliminating what appellants now concede is an inequality in treatment against the Staley Company was disapproved by the Commission. It does not now lie in the mouth of the Commission to contend that appellees or the Staley Company should have taken some other or different action. Having disapproved the method proposed by appellees for climinating the inequality, the only method available to appellees, we think the Commission was under the responsibility of proceeding with an investigation to determine what other means might be found to bring about an equality in treatment between the

Staley Company and other shippers having private sidings or using team tracks in Decatur, including competitors of the Staley Company.

The language used by this Court in *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 409 has equal application to the case at bar. This Court there had before it a decree setting aside an order of the Commission finding unlawful certain reduced rates on coal. This Court, after stating that the point of the Commission's decision was not that the then-existing rates were sound, but that they must be maintained even if unsound for fear of a rate war which might spread beyond control, said in part (p. 509):

> "The danger is illusory. The whole situation is subject to the power of the Commission, which may keep the changes within bounds."

This Court, after pointing out that it is not the railroad that was subject to the reproach of dealing with the matter piecemeal but that the reproach of piecemeal action was incurred by the Commission, which had not adjudged the fairness of the relation then existing between the rates, which had put off to an indefinite future the remodeling of the rate structure, and had left the Milwaukee Railroad helpless in the interval, said (p. 510):

> "* * * In brief, a schedule of lowered tariffs has been canceled though the facts that control the validity of the reduction have yet to be determined. This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come."

The reproach of piecemeal action is incurred by the Commission in the case at bar. Appellees, required as

they were by the Commission's order herein to cancel the tariffs proposed by them that would eliminate the inequality in treatment, were compelled to be the means whereby the Staley Company has been left helpless in the interval. And it has been a long interval, as this record shows. It only requires a reference to the Statement in this case (p. 4) to see that there has not been a full discharge by the Commission of an immediate responsibility, that on the other hand there was inaction and postponement. The responsibility was shifted from the shoulders of the present to the shoulders of the future. It took the opinion and decree of the lower court to prod the Commission to action, but which action has not eliminated the long-existing inequality.

Appellants argue that the Commission's order was authorized by the Interstate Commerce Act (pp. 34-44). They deal at length with the right and the duty that the Commission possesses of determining under Section 1(3) of the Act what constitutes complete delivery, or where transportation begins and ends. Appellees do not dispute or challenge the exclusive jurisdiction of the Commission to determine such administrative questions. They do challenge, however, the right to determine such questions when the Commission in reaching that determination does not observe the standards that control its action, and where as a result of its failure to do so, it requires the railroads to become the medium through which an admitted inequality of treatment is imposed upon the shipper.

Appellants refer to the Commission's decision in the *Weirton Steel Co. Case,* 209 I. C. C. 445, one of the cases decided upon appeal in *United States* v. *American Sheet & Tin Plate Co.,* 301 U. S. 402, and the *Crane Company Case,* 210 I. C. C. 210, which was before the court in *In-*

land Steel Co. v. *United States,* 23 Fed. Supp. 291. Appellants point out that these cases involved the spotting services actually being performed by a carrier at an industry and not allowances, and arguing that these cases are controlling, they say (p. 43):

> "It can hardly be gainsaid, that if Staley is enentitled to 'free spotting service' because its competitors have not been subjected to the same charge by orders of the Commission, by the same standard, Crane is entitled to free spotting service since its competitors have not been subjected to a similar charge."

But here again appellants overlook the essential difference between the issues in the cases heretofore decided by the Commission and the courts and the case at bar. Questions of discrimination and preference were not involved in the *Weirton* and *Crane* cases, and neither of these companies has since raised any issue under Sections 2 or 3. These two cases had no such background of facts as the case at bar. Appellants refer to the fact that Judge Lindley, who wrote the opinion in the *Inland Steel Co.* case, joined in the majority opinion in the present case. This but gives further emphasis to the essential difference between the cases, a difference obviously recognized by Judge Lindley.

This Court in its recent decision in *Eastern-Central Motor Carriers' Association* v. *United States,* No. 105, October Term, 1943, decided February 7, 1944, in reversing the judgment of the lower court which had upheld a decision of the Commission rejecting certain schedules filed by the Association, said (p. 14):

> "In returning the case we emphasize that we do not question the Commission's authority to adopt and apply general policies appropriate to particular classes of cases, so long as they are consistent with the statutory standards which govern its action and are formulated not only after due consideration of

> the factors involved but with sufficient explication to enable the parties and ourselves to understand, with a fair degree of assurance, why the Commission acts as it does. Cf. *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 488, 489."

The Court said that it did not undertake to tell the Commission what it should do in that case, that this was not its function, that it only required that whatever result be reached, enough be put in the record to enable this Court to perform the limited task which belongs to it.

The question of what terminal services come within the legal obligation of a railroad is essentially one for the Commission. But in determining that question the Commission, to do justice, must be guided by the standards which control its action.

Appellees submit that this case must likewise be sent back to the Commission, to the end that the Commission may apply to the issues the standards laid down in the Interstate Commerce Act.

II.

The Commission failed and refused to apply the tests which it has laid down whereby it may be determined whether a particular service is within the scope of the railroad's legal obligation.

The Commission not only failed to observe the standards which Congress laid down to govern its action, but it failed to observe the tests which it has developed itself to determine whether a particular switching service is within the scope of the railroad's legal obligation. It is only by the application of these standards and principles that the Commission can avoid the entry of orders that will bring about the very unjust discrimination and undue prejudice that it was the intention of Congress to prevent and prohibit by the passage of the Interstate Commerce Act.

The Commission in *United States P. & F. Co.* v. *Dir. Gen.*, 57 I. C. C. 677, said that just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. Continuing the Commission said (p. 683):

> "* * * The customary practice generally as to carload traffic, the customary delivery service extended to the rank and file of industries in the same general district, the customary delivery service rendered to the rank and file of competing industries in the same general district, the customary delivery service rendered to competing industries in the same rate group under the same transportation rates, involving practically the same line-haul service, these are considerations pertinent to the determination of what constitutes a reasonable delivery service and the carrier's legal obligation in a particular instance. However, in testing the extent of the carrier's legal obligation as to the delivery of carload freight, two circumstances are entitled to primary consideration. One is the extent of the service involved in a typical team-track delivery; the other, the extent of the service rendered in the typical shunting of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery."

In *Studebaker Corp. Terminal Allowance*, 210 I. C. C. 137, the Commission said that the allowance paid to the industry was unlawful because (p. 139):

> "The service required in placing cars at points of unloading or loading within the plant greatly exceeds the service performed in delivering or receiving cars at other industries in South Bend, or on team tracks. Therefore, the Studebaker Corporation is unduly preferred as compared with shippers generally."

There are other cases in which the Commission has dealt with allowances or spotting services upon a record

that contained comparisons of the services rendered at the plant in question with those rendered at other plants in the same switching district or in the same general territory, including the plants of companies with which the plant under investigation was in competition.*

The most recent pronouncement of the Commission dealing with the standards that should be applied to these cases is that found in a letter dated November 17, 1943 written by Mr. Commissioner Splawn, Chairman of the Commission's Legislative Bureau, to Senator Burton K. Wheeler, Chairman of the Committee on Interstate Commerce of the United States Senate, regarding Senate Bill 1492. Mr. Commissioner Splawn said that this bill would impose a legal obligation on the line-haul railroads to spot cars at any and all loading and unloading points on the property of large industries—

> "performing service greatly in excess of that required in making simple placement on an ordinary siding or team track for other shippers in the same locality."

To what extent did the Commission through the testimony of its own employes in the case at bar compare the switching services at the Staley plant with those rendered at other industries, including competing industries, and at team tracks in the Decatur Switching District and in the same general territory? An examination of the testimony offered by the Commission's witnesses will disclose that notwithstanding the fact that they spent many weeks in investigating the spotting services performed at the Staley plant in Decatur, they made no investigation of the spotting services performed at other industries or on team tracks in the Decatur Switching District or elsewhere (R. 666-776).

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* *Snoqualine Falls Lumber Co. Terminal Allowance*, 245 I. C. C. 112 p. 114; *Celotex Co. Terminal Allowance*, 245 I. C. C. 105; *Red River Lumber Co. Terminal Allowances*, 256 I. C. C. 379.

The testimony of appellees' operating officers shows that the switching of a given number of cars at the Staley plant is less burdensome and less costly than the switching of the same number of cars at other industries and team tracks in the Decatur Switching District (R. 849-853, 535-537, 405-409).

The Commission made no effort to rebut or refute this testimony. It stands without any challenge in the record. It reflected the application of the very principles that the Commission has announced in the cases cited in the earlier portion of this section: a comparison of the switching services at the plant under investigation with those rendered at other plants and on team tracks in the same locality.

The presiding Commissioner thought that some of these questions were hypothetical in nature (R. 851, 853). But these comparisons reflected the very comparisons called for by the tests established by the Commission.

The Commission makes no mention of these comparisons in its report. It erroneously assumed that even where issues under Sections 2 and 3 presented themselves it could confine its consideration of the facts to those dealing with spotting services at the plant under investigation. The Commission, moreover, was not in any position to determine whether the spotting services at the plant were excessive or were beyond the carrier's legal obligation until it made some comparison of those services with the services ordinarily and customarily given other shippers in the Decatur switching district and competitors of the Staley Company in Decatur or elsewhere.

In reviewing this testimony appellees are sharply reminded of what the Commission said in its report in *Car Spotting Charges*, 34 I. C. C. 609 (p. 616):

> "The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries."

In *United States P. & F. Co.* v. *Dir. Gen.*, 57 I. C. C. 677, the Commission further said (p. 684):

> "Where an industry is accorded the equivalent of the delivery service rendered to the majority of shippers in the same district which receive other team-track delivery or simple switching delivery, there is no basis for a finding that the line-haul rates contemplate an additional spotting service at such industry. * * *"

While appellees are criticized by appellants for assailing the Commission's order, this quotation epitomizes the reasons why appellees have challenged the Commission's order of May 6, 1941. To approach these questions as appellants have approached them in their brief, to insist that the Commission in passing upon the issues in such a proceeding as the present one need not go beyond a bare description of the physical services connected with the switching operations at the plant under investigation, and can ignore the services customarily and ordinarily given at other plants and on team tracks in the same switching district and in the same territory, is bound to bring about undue prejudice and unjust discrimination.

The Commission cannot determine whether the spot-

ting services at the Staley plant, taking that plant as a whole, or at particular locations within the plant, exceed the equivalent of team-track deliveries in the same locality or exceed the customary delivery services extended to the rank and file of industries in the same general district or in the same general rate group, unless it makes the comparisons called for by these standards which it itself has evolved. The employes of the Commission in their testimony failed to make any such comparisons, and the Commission ignored the unrefuted testimony offered by appellees' operating officers in which such comparisons were made. Appellees have no other standards to apply except the very ones that the Commission has made but which it has ignored in this proceeding. If some new standard is to be applied, then the Commission ought frankly to discard the standards laid down in these decisions and announce to the railroads and to the shippers what new standards will control. (See Mr. Commissioner Mahaffie's dissenting opinion, quoted on page 14 of this brief.)

Appellees referred in their Statement (p. 4) to the testimony offered by the traffic officers of competing industries respecting the terminal services rendered at their respective plants (R. 544-572). The standards laid down by the Commission call for comparisons of the kind embraced in the testimony of these traffic officers. It brought out in bold relief the existing inequality in treatment and again brought home to the Commission that inequality. The Commission, nevertheless, cast this testimony aside (R. 42).

Appellants themselves say in their brief (p. 13) that

> "The standard laid down is what has long been termed the 'equivalent of team-track or simple switching delivery,' but it should be noted that the Commission defines or specifies service that is to be regarded as in excess thereof."

But, as pointed out in the decisions that appellees have just reviewed, if injustice is to be avoided, if inequality in treatment is to be prevented, and if the fundamental purposes of the Act are to be carried out, there must be a comparison of the spotting services at a given plant with the spotting services that are customarily and ordinarily performed in switching other industries and team tracks in the same locality and in the same rate group. The standard of switching services is not found in words but in action. "Team-track delivery" is not merely a phrase, a combination of words. The railroads have team tracks in every community. The railroads from time immemorial have performed spotting services on team tracks and at industries without any charge in addition to their line-haul rates.

It cannot be said that the Commission would have reached the decision it did in the case at bar had it applied to its own tests, and had understood that when issues of discrimination and preference present themselves, it is only by the application of those tests that a standard of comparison in a given locality can be evolved, and discrimination and preference avoided.

III.

The Commission's Order Is Arbitrary.

An admitted inequality in treatment existing for a period of six years cannot be said to be a temporary inequality.

The lower court in its conclusion of the law found, among other things, that the order in question is arbitrary, unjust, and unreasonable (R. 139). We agree with appellants that a finding that the order is unjust and unreasonable is equivalent to holding that the order is invalid because it is arbitrary.

Appellees' statement of the case (p. 4) shows on its face the arbitrary action of the Commission that has

characterized this proceeding ever since 1937, arbitrary action which culminated in the Commission's order of May 6, 1941, here under attack.

Appellees were first required to impose a spotting charge upon the Staley Company on June 15, 1937, pursuant to the Commission's findings in *A. E. Staley Mfg. Co. Terminal Allowance,* 215 I. C. C. 656. The Commission's order of May 6, 1941, requires appellees to continue this charge in effect. All during this period of time and up to July 31, 1943, the Commission sat by with folded arms, in spite of the fact that *first,* the Staley Company, by numerous petitions, *second,* appellees by tariffs, which were suspended by the Commission in the case at bar (*I. & S. Docket No. 4736, Switching Charges at Decatur, Ill.*), and *third,* both parties, by testimony, briefs and arguments before the Commission, brought home to the Commission the inequality in treatment to which the Staley Company had been subjected during all these years.

It was not until July 31, 1943, that the Commission instituted an investigation with respect to the terminal services at certain plants in Decatur and Chicago, an investigation that was responsive not to anything that the Staley Company or appellees had done or said, but to the opinion and decree herein of the lower court. Appellees, notwithstanding the pendency of this investigation, are required to continue the spotting charge against the Staley Company.

The lower court was right when it said in its opinion (R. 137):

> "* * * Where one industry of many in a highly competitive field is singled out and subjected to a tariff not imposed on any other and under compulsion of the order of the Commission obliged to pay such tariff for a number of years without relief and without action to establish like tariffs for competing

industries, the order becomes an instrument of destruction. Such treatment long continued could only mean extinction of the industry thus affected. So surely as 'the power to tax is the power to destroy,' so is the power of rate regulation when applied inequitably."

Appellants in contending that the Commission's order is not arbitrary, assume that the Commission came to the matter of spotting charges at the Staley plant for the first time on May 6, 1941, the date of its report in the case at bar. The inequality in treatment against the Staley Company was brought to the Commission's attention not once but many times since October 27, 1937. The Commission all through the years had notice of the inequality in treatment, but nevertheless did nothing about the matter.

Appellants admit the inequality in treatment that appellees have been required to mete out to the Staley Company over the years under the orders of the Commission (pp. 66, 80). They stamp the inequality as a "temporary" one, although it has been continued over a period of more than six years. We submit that this admission of appellants carries with it a recognition of arbitrary action on the part of the Commission over the years.

Appellants in that section of their brief in which they contend that the Commission's order is not arbitrary, have scattered many unsound arguments that are not pertinent to a consideration of that question. We shall deal with some of them.

To sustain the decree herein would not prescribe impossible requirements precluding the removal of rebates as contended for by appellants (p. 81). Nor is there anything in the opinion of the lower court or in the position taken by appellees that would place an impossible burden

and task upon the Commission in the administration of the Act. That this is so is shown by the fact, as heretofore pointed out, that the Commission, within a comparatively short period of time, and after an investigation extending over several years, entered orders dealing with allowances and terminal services at iron and steel mills. Thus one industry was not placed at a disadvantage with another in the same field and subjected to unequal treatment. The investigation, moreover, that the Commission found it possible to make on July 31, 1943, respecting the switching services performed at plants of the Staley Company's competitors, could have been instituted years ago. The names of these competitors were not suggested to the Commission for the first time by the Court's opinion. They were first brought to the attention of the Commission in a petition filed by the Staley Company on March 16, 1938 (R. 100-101), more than five years before the Commission instituted this investigation.

The appellees rely upon language of this Court in *Union Stock Yard Co.* v. *United States,* 308 U. S. 213 (pp. 223-224) in support of their contention that the view urged by appellees would impose an impossible task on the Commission. This Court there said that the issue to be resolved was whether the service rendered by the Stock Yard Company at Chicago was within the jurisdiction of the Commission, but as to this issue the practices by others at other stock yards were irrelevant and their bearing on the administrative construction of the statute too remote and indecisive to compel a burdensome inquiry into collateral issues.

Obviously this is a wholly different case from the case at bar. There is no suggestion that there was any competition between the Stock Yard Company and stock yard companies at other points. The case was not one

where the Commission had imposed one charge upon one company and over a six-year period, in the face of the matter having repeatedly been brought to its attention, had taken no steps to investigate the services at competing plants in the same switching district and in the same general terrtiory. The case involved a question of jurisdiction and not questions of rate relationships between competitors and inequality in treatment in those relationships.

The question in the case at bar is whether the Commission somewhere along the line and some time in the course of the years, long before July 31, 1943, should not have exerted itself and exercised the power that it has of investigating the facts to determine how this inequality in treatment should be removed. The Commission rejected the method proposed by appellees of removing the inequality in treatment, but took no steps towards making such further investigation of the facts as would enable the Commission to approve some other method of removing the inequality.

Appellants state (p. 66) that the effect of the ruling below alone is to permit a continuance of a recognized variation from published rates prohibited by Section 6(7) until the Commission can make a decision as to all other like rebates and stop them simultaneously. Appellants have overlooked the fact that while the Commission made its investigation of allowances and spotting services at iron and steel mills in 1931 and 1932, it was not until May 14, 1935, that it began to hand down decisions dealing with allowances and spotting services at particular industries. The variation from the published rates continued all during this period of time. Appellants' arguments, therefore, in the case at bar are belied by the Commission's approach to this problem in the years from 1931 to 1936.

The Commission, moreover, cannot possibly determine whether spotting services at a given plant are beyond the carrier's legal obligation and therefore constitute a departure from the published rate prohibited by Section 6(7) until it has given heed to the provisions of the statute which it is empowered to enforce, and until it has applied the tests which it has laid down to determine whether spotting services at a given plant come within a carrier's legal obligation.

Appellants state (p. 76) that it becomes apparent that the real objective in this action is not to insure equality of charges to competing industries but rather to avoid such a charge as to all. This is a wholly erroneous statement. The objective of this action is to prevent these appellees from being made the instruments of oppression and inequality among shippers.

Continuing, appellants say (p. 77) that in such a manner the appellees and industries located on their lines would obtain a competitive advantage over other carriers and other industries where, under final judicial decisions, similar free services have already ceased. But appellants have wholly ignored the fact that no other corn or soybean processing industry has been required by the Commission to pay such a charge as appellees are required to make against the Staley Company. The Staley Company for over six years has been singled out for special and inequitable treatment and has been required, in the face of repeated protests, to pay a charge that no other competitor pays.

Appellants insist in one breath that appellees claim that if the Staley Company is required to pay a spotting charge, its competitors must also be required to do so, and in the next breath that the real objective in this action is to avoid the assessment of a spotting charge as to all industries, including all industries that compete

with the Staley Company regardless of the kind and character of the services involved. Whether the Staley Company or any other industry should pay a spotting charge can only be determined by an investigation in which the Commission applies the standards that govern its action and the principles that it itself has announced.

Appellants further state (p. 70):

> "* * * Evidence as to one plant obviously could not disclose operating conditions at another plant. Comparison of similarity between two plants affords no practical basis for decision, since each case must be heard on its own record, with a full hearing and opportunity to submit evidence."

But comparisons of operating conditions at other plants and team tracks in the same district would disclose the services that are ordinarily and customarily performed by the railroads and would therefore afford the only practical basis for decision. They would provide, as the Commission has so many times held, some standard by which the services at a given plant could be measured.

The procedure followed by the Commission in this case, under which the Commission selects one industry in the field, requires the railroads to impose a spotting charge upon that industry and then over a period of six years take no steps to investigate other industries in the same field, notwithstanding complaints of inequality, would inevitably lead both the Commission and the carriers into a bottomless pit of litigation. This procedure is the very embodiment of arbitrary action.

IV.

The Commission recognized the justice of the lower court's opinion when it instituted an investigation respecting the switching services at the competing plants specifically named by that court.

In the preceding sections of this brief we have shown that the Commission failed to observe the statutory standards which govern its action and that it failed to apply the principles that it has established whereby it may be determined whether a particular service is within the scope of a railroad's legal obligation. These considerations require an affirmance of the lower court's decree.

But there is another reason why the lower court's decree should be affirmed: the Commission itself has recognized the inherent justice of the opinion and decree of the lower court.

The opinion of the lower court was handed down on June 10, 1943 (R. 134) and the final decree was filed on July 14, 1943 (R. 143). The appellants have set out in the appendix to their brief an extract from the Commission's last annual report, in which the Commission referred to the case at bar and stated that it was making an investigation of the alleged preferred services. This investigation was instituted by a notice of the Commission dated July 31, 1943, in *Ex Parte 104, Part II, Terminal Services,* which notice assigned that proceeding for hearing with respect to the terminal services at three plants in Decatur and one at Argo, Illinois. These are the very plants named by the court in its opinion (R. 136) as competing plants at which no charge is made for switching service.

What prompted the Commission to institute this investigation respecting terminal services at these four plants?

Appellees have heretofore quoted the court's statement (R. 137) that where one industry of many in a

highly competitive field is singled out and subjected to a tariff not imposed on any other, and is required by an order of the Commission to pay such a tariff charge for a number of years without relief and without action to establish like tariffs for competing industries, the order becomes an instrument of destruction.

And the lower court in one of the concluding paragraphs of its opinion said (R. 139):

> "* * * So far as we know, this precise question has never been before any Court, but with a firm belief in the doctrine that no wrong shall exist without a remedy it seems to us that the Commission must meet the problem head on and devise some over-all method of dealing with competitive industries that will eliminate the injustice here so apparent. Otherwise, the purpose of the Act will be thwarted and the resultant inequities will outweigh the evils sought to be corrected. See *U. S.* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 499."

Thus the Commission at this late date, after a lapse of more than six years, has instituted an investigation to determine whether unjust discrimination and undue prejudice exist as a result of its decision requiring the imposition of a spotting charge against the Staley Company. But the investigation instituted by the Commission under its notice of July 31, 1943 is simply responsive to the court's opinion and is a recognition that the court is right in the position it took.

Indeed, the Commission in commenting upon the case at bar in its Fifty-Seventh Annual Report, referred to by appellants in the appendix to their brief, said (p. 59):

> "* * * In attacking our order in the lower court, the industry contended that it was unjustly discriminatory and unduly prejudicial to require it to pay a spotting charge when its competitors receive such service from the carriers without charge. We are investigating all such alleged preferred services

with a view to determining whether the service performed at such plants by the carriers is in excess of that which the carriers are obligated to perform under their line-haul rates."

The Commission here plainly recognizes that the course it has pursued from the very beginning respecting the case at bar has been wrong, and that when an issue under Sections 2 and 3 is raised, the Commission cannot treat the switching services at a given plant as if they were performed in a vacuum, and bore no relationship to the services performed at competing plants in the same locality and in the same rate group. The Commission here recognizes that Sections 2 and 3 of the Act exist, and that these sections are just as binding upon the Commission in a general investigation instituted on its own motion as they are upon railroads.

But the Commission in instituting this further investigation has not retroactively or presently cured the injustice imposed upon the Staley Company by the assessment of a spotting charge required to be made by appellees against that Company through all these years. The Commission would now require appellees to continue this spotting charge while it makes the investigation it should have made years ago when issues under Sections 2 and 3 were first brought to its attention.

Appellees submit that it does not now lie in the mouth of the Commission to challenge in this Court the validity and justice of the lower court's opinion, when the Commission has proceeded to make the very investigation of switching services at competing plants called for by that opinion.

We submit that the Commission has by its action plainly recognized the truth and justice of the opinion and decree of the District Court and that it has, therefore, impliedly waived any right to challenge the validity of that decree in this Court.

V.

The lower court recognized that it is the function of the Commission to determine administrative questions. The court left those questions to be determined by the Commission but in accordance with the statutory standards.

Appellants argue that the lower court erred in deciding administrative questions not decided by the Commission. They cite many cases that are representative of the long line of cases decided by this Court, holding that administrative questions are to be determined by the Commission and not by the courts.

An examination of the lower court's opinion (R. 134-139), its Findings of Fact and Conclusions of Law (R. 139-143), will disclose that the court recognized that the questions involved were essentially administrative questions for the determination of the Commission, but that the Commission in passing upon those questions must observe the statutory standards which govern its action.

If the lower court's opinion had the effect and the reasoning that appellants ascribe to it, the Commission would find its hands tied in any future investigation it might be called upon to make respecting the switching services at the Staley plant and at the plants of the Staley Company's competitors. That the Commission's hands have not been tied by the court's opinion and decree is shown by the fact that following the entry of the decree it instituted an investigation respecting the spotting services being rendered at plants of the Staley Company's competitors specifically named in one of the paragraphs in the court's opinion (R. 136).

Appellants state (p. 59) that the lower court found two facts, neither of which was decided by the Commission and neither of which was necessary or required under previous decisions of this Court, to render the re-

port and order herein valid: (1) that the switching situation at the Staley plant was similar to that at nearby and competing industries; and (2) that discrimination and preference resulted against the Staley Company because of the order.

Why does the Commission feel that it was not called upon to decide these two facts? It was because it erroneously assumed that as a matter of law it was not required to give consideration to evidence showing the switching services rendered on team tracks or at other industries in Decatur or at competing plants. It mistakenly believed that it could confine its consideration of the facts to those which pertained only to the services rendered at the Staley plant, notwithstanding the issues under Sections 2 and 3 that were specifically brought to its attention not once, but many times, and the fact that under the principles established by the Commission it could not fairly determine whether the spotting services at the Staley plant were beyond the carrier's legal obligation unless it made some comparison of those services with the services customarily rendered on team tracks and at other industries in the same switching district and at the plants of the Staley Company's competitors.

The Commission took this position because it considered itself free from the duty of applying Sections 2 and 3 and from making the comparisons called for by its own decisions. The lower court simply considered evidence that the Commission mistakenly refused to consider.

Let us examine the lower court's approach to these questions and the court's conclusions. The court, after referring to the Commission's statement that the evidence respecting spotting services at other plants did not satisfactorily show that the circumstances and conditions under which the spotting was performed were

substantially similar to those at the Staley plant, but that if it did, it would only show the probability of the existence of unlawful practice and the need for investigation, said (R. 137):

> "It appears that the Commission was of the belief that each case must stand on its own bottom and be considered by the Commission independent of any other and without relation to the probable inequities bound to flow from an order not applicable to all similarly situated. We think this too narrow a view. * * *"

And the court after pointing out that where an industry is singled out and obliged to pay such a tariff charge for a number of years without relief, and without action by the Commission to establish like tariffs for competing industries, the order becomes an instrument of destruction, said (R. 137-8):

> "We think the finding of the Commission that the practice of furnishing spotting service to Staley by the carriers would accord Staley more favorable treatment than others, not supported by the evidence. The substantial evidence indicates quite the contrary. It indicates that under the present order Staley is being discriminated against. It thwarts the real purpose of the Commission to remove discrimination in certain instances where carriers may have accorded a preferential service to one customer over another. The order here obliges the carriers to discriminate against Staley, and, as they assert against their will, and in violation of Sections 2 and 3 of the Act."

The court then made a distinction which appellants overlooked between this case and the cases heretofore decided by this Court involving allowances and spotting services at various plants.* It may here be said that this Court in those cases was dealing with a number of

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* *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *United States* v. *Pan-American Petroleum Corp.*, 304 U. S. 156.

like orders in relation to a group of competing industries. No question of one industry having received a different treatment from all others was before the court.

The court, in short, examined the evidence in this record which the Commission refused to consider, and found that this evidence showed that the Staley Company was being subjected to an inequality in treatment. No one can examine the history of this litigation and the facts and avoid reaching a similar conclusion. The appellants concede the existence of this inequality (pp. 66, 80).

But the lower court, recognizing that the fundamental issue was one for the determination of the Commission, made no order that was conclusive upon the parties, that spoke with finality, or that substituted the court's judgment for that of the Commission. It said, as we have just seen, that with a firm belief in the doctrine that no wrong shall exist without a remedy, it seemed to it that the Commission must meet the problem head-on and devise some over-all method of dealing with competitive industries that will eliminate the injustice here so apparent.

If the decree below is affirmed the duty and the right that the Commission has to pass upon the questions involved can in no respect be affected. But the Commission will have to bear in mind that it sits to administer not one section of the Act but all the sections thereof, and that when issues are raised thereunder it may not ignore them and require the railroads to impose over many years an inequality in treatment upon one shipper.

Appellants state that in effect the court below has found on the facts that the actual conditions of operation at the plants of the Staley Company's competitors are such as to require the assessment of a spotting charge at those plants if a spotting charge has to be imposed upon the Staley Company. The court has made no

such finding. The court has said to the Commission that it must devise some method of dealing with competitive industries that will eliminate the injustice here so apparent.

Appellees do not contend, as suggested by appellants (p. 62), that the Commission could impose a spotting charge at any plant in the absence of a fair hearing for all the parties.

Appellants further state (p. 62) that the plants competing with the Staley Company were not before the Commission in any proceedings then pending, and that testimony concerning the situation at such plants was merely collateral and irrelevant to a determination of the issues at the Staley plant. But the point is that the Commission was in no position to determine, in justice to all the parties, whether the spotting charge against the Staley Company should be continued until it had compared the spotting services at the Staley plant with those at other plants and on team tracks at Decatur and at other points in this same general territory where the competitors of the Staley Company are located, and until it had satisfied itself, in the light of these comparisons, that the imposition of a spotting charge against the Staley Company would not result in violations of law.

Appellants state (p. 63) that the complaint and opinion below show (R. 11, 137, 138) that the "preference and discrimination" alleged and found were by comparing the Staley situation with the situations of other shippers in the same locality and on the lines of appellees, or in direct competition with the Staley Company. Appellants then state (pp. 63-4):

> "* * * Statutory provisions against discrimination and preference do not contemplate such a limited

comparison between a shipper and his neighbors or competitors. Discrimination and preference must be found by comparing any preferred shipper to another, even though separated by the continent and engaged in an entirely noncompetitive business. An allowance or free service condemned by the Act constitutes a rebate whether extended to a favored steel industry or a food-processing company, to a lumber company in Oregon or to a stockyard in Chicago. * * *"

Appellants must know that this is a wholly inaccurate statement of the law respecting discrimination and preference. When it comes to questions of discrimination and preference, questions that involve essentially a relationship between shippers, it is well established that one railroad cannot be held responsible under the Act for discrimination or preference beyond its control and within the control of other railroads. As Mr. Justice Brandeis put it in *Central Railroad Co.* v. *United States,* 257 U. S. 247 (p. 259):

> "What Congress sought to prevent by that section (Section 3) as originally enacted, was not differences between localities in transportation rates, facilities and privileges, but unjust discrimination between them by the same carrier or carriers. Neither the Transportation Act, 1920, * * * nor any other earlier mandatory legislation has changed in this respect, the purpose or scope of Section 3."

And this Court in the more recent case of *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, said (p. 650):

> "A carrier or group of carriers must be the common source of discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against them."

This construction of the law simply gives further emphasis to the erroneous theories of law that have perme-

ated the Commission's approach to the issues before it in this case and that have been responsible for the errors into which it has fallen. It can purge itself of those errors only by following and observing the standards which must govern its actions.

Appellants conclude this section of their brief by a reference (p. 64) to that portion of the lower court's opinion in which it held that the question of discrimination was not before this Court in the *American Sheet & Tin Plate Company* and the *Pan-American Petroleum Corporation* cases (301 U. S. 402 and 304 U. S. 156), and that in those cases the Court was dealing with a number of like orders relating to a group of competing industries. Appellants add this comment (pp. 64-5):

> "* * * However, neither the Commission nor the Court, has in these *Ex Parte 104* supplemental reports, dealt with a number of like orders in relation to a group of competing industries. * * *"

But a reference to the cases decided by the Commission, classified according to industries, shows that whatever may have been the intention of the Commission, the actual result was to deal, within a comparatively short period of time, with the terminal services rendered to a group of competing industries. This is shown in Appendix II to this brief, in which appellees have classified according to the kind of business all the cases decided by the Commission since May 14, 1935, the date of the Commission's report in *Propriety of Operating Practices —Terminal Services*, 209 I. C. C. 11.

Appellants' argument suggests that appellees contend that the spotting services now being performed at the Staley plant are lawful, and that the spotting services at the plants of the Staley Company's competitors are in every respect lawful. But appellants here missed the

point. The point appellees make is that the Commission is not in a position to pass intelligently and fairly upon the issues respecting the spotting services at the Staley plant or other plants until it gives heed to Sections 2 and 3 of the Act—until it passes upon the issues in the light of the standards laid down in the Act, as well as the standards which it itself has developed.

What the lower court did by its opinion and decree was really to send this case back to the Commission to the end that the Commission may reexamine the issues and the facts in the light of the standards laid down in the Interstate Commerce Act that control its action and in the light of the principles that it has itself developed in these cases. The lower court no more invaded the jurisdiction of the Commission than did this Court in *United States* v. *Carolina Carriers Corp.*, 315 U. S. 475; *City of Yonkers* v. *United States* (decided January 3, 1944) and *Eastern Central Motor Carriers Assn.* v. *United States* (decided February 7, 1944), in which cases this Court set aside orders of the Commission in proceedings because the Commission had failed to comply with the statutory standards which control its action. And in each of these cases this Court took pains to point out that it expressed no opinion on the problems which were essentially for the Commission to pass upon, problems which involved, to use the language of this Court in *United States* v. *Carolina Carriers Corp.*, *supra*, not only "a weighing of evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved."

VI.

Only when the statutory standards have been applied can the question be reached whether the findings are supported by evidence.

Certain subsidiary findings of the Commission are not supported by facts more particularly stated in the report, are without support in the evidence, and are contrary to the evidence.

Appellants argue that the Commission's order is supported by substantial evidence (pp. 44-54). They state (p. 47) that except as to the Burwell Yard appellees accept as supported by evidence all the other findings of the Commission as to actual conditions and operations. Appellees make no such acceptance of all the other findings of the Commission.

Appellants wholly miss the point. The basic finding in a case of this kind is, of course, that which specifies where transportation begins and ends. Conclusion No. 2 in the Commission's report states (R. 43) that all services between the yards and points of loading or unloading within the Staley Company's plant area are plant services for the Staley Company and not common carrier services covered by the line-haul charges of the respondent carriers. But no one is in a position to determine whether this basic finding is supported by the evidence, and indeed, whether the Commission would have made such a finding, until it is made clear that the Commission applied the statutory standards which govern its action. This Court stated this point well when it said in *United States* v. *Carolina Carriers Corp.*, 315 U. S. 475, (p. 489):

> "Only when the statutory standards have been applied can the question be reached as to whether the findings are supported by evidence. That is why we cannot say that the Commission would be justified in placing the same restrictions on the certificate in this case had a correct construction of the Act been taken."

It cannot be said that the Commission would have been justified in reaching the conclusion it did respecting spotting services at the Staley plant had a correct construction of the Act been taken.

There is one finding of fact and a conclusion contained in the Commission's report, however, that are not supported by facts more particularly stated in the report and are without support in the evidence and are contrary to the evidence, which we bring to the Court's attention. We do this for the reason that they bring out the perfectly formal and perfunctory way in which the Commission has dealt with the case at bar. The Commission has wholly ignored the very substantial difference between the issues in the case at bar and the issues in the cases decided by the Commission which were before this Court in the *American Tin Plate Company* and the *Pan-American Petroleum Corporation cases* (301 U. S. 402 and 304 U. S. 156).

When the Commission came to make its findings in the case at bar, it simply turned to the findings in these earlier cases, treating them as binding precedents, and used them even though the facts and issues in the case easier merely to copy what it had done in earlier cases, The Commission in short failed to bend its mind to the facts and to the issues in the case at bar, finding it much easier merely to copy what it had done in earlier cases, where the facts and the issues were wholly different.

The Commission in its report made several findings of fact, No. 5 of which states that the services between the interchange tracks, described in the report, and points of loading and unloading within the plant area, are in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings and spurs (R. 42-43). This finding is described by the Commission (R. 42) as a "principal basic fact."

The finding that the switching services at the Staley plant are in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or on industrial sidings involves a comparison of services which must have as its base not only a consideration of what services the Staley Company receives, but a consideration of the services rendered by appellees or by any other railroads, for that matter, in the receipt and delivery of traffic on team tracks or on industrial sidings.

This Court in *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 499, upholding the decree of the lower court setting aside an order of the Commission, said (p. 506):

> "The statement in the second of these paragraphs that the proposed rates would be 'unreasonable' must be read in the light of the report as a whole, and then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated. Cf. *Florida* v. *United States*, 282 U. S. 194, at p. 213; *Southern Pacific Co.* v. *Inter Com. Com.*, 219 U. S. 433, 449. * * *" *

There are no facts more particularly stated in the Commission's report in the case at bar which support the finding that the switching services at the Staley plant are in excess of those rendered shippers generally in the receipt and delivery of traffic on team tracks or industrial sidings.

No facts were more particularly stated in the report to support that finding because there were no facts in the record to support such a finding. The Commission's witnesses, as we have seen, confined their testimony to a description of the switching services at the Staley plant. They made no effort to compare the switching services at the Staley plant with the switching services rendered by appellees or by other railroads on team

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* Attention is also directed to *Florida* v. *United States*, 282 U. S. 194, p. 213.

tracks or industrial sidings at Decatur or elsewhere in this same general territory. The uncontradicted testimony offered by the officers of appellees shows that the services rendered shippers by appellees at Decatur and at all other points on their lines include the services connected with the placing of cars within the plant areas, and that no separate charge is made by appellees for such terminal services performed by them at Decatur or elsewhere over and above their line-haul rates, except the charge that they have been required to make against the Staley Company.

The Commission referred in Finding of Fact No. 5 to the services rendered generally in the receipt and delivery of traffic on team tracks. The testimony of appellees' operating officers that stands without any challenge or contradiction in the record, shows that the transportation services connected with the placing of cars within the Staley plant are less burdensome and less expensive than the placement of cars on team tracks in Decatur served by appellees (R. 404-405, 531-538, 849-852).

An examination of the record therefore not only shows that it is devoid of any facts which sustain the Commission's finding, but that the finding is contrary to the uncontradicted evidence in the record.

The testimony of the operating officers of appellees respecting the switching services rendered on team tracks and at other industries in Decatur takes on a greater significance when we bear in mind the many decisions of the Commission in which it has held that whether a particular service at a plant is within the scope of a carrier's legal obligation depends upon whether that service is in excess of that performed in single switch or team track delivery in the same general district or in the same general rate group. These cases are discussed on page 45 of this brief.

The Commission in its Conclusion No. 3 finds that the performance by appellees, without charge in addition to the line-haul rates, of switching services within the Staley plant, would result in the Staley plant receiving a preferential service not accorded to shippers generally. The use by the Commission of the word "preferential" was not fortuitous. The word "preferential" is a word of art. Plainly the Commission was here reaching a conclusion under Section 3 of the Act, which prohibits undue preference and undue prejudice. Questions of undue preference and prejudice involve questions of relationship. If one shipper is unduly preferred, another shipper must be unduly prejudiced. The Commission itself has many times said * that discrimination under Section 3 to be undue must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored, and that generally a competitive relationship between the commodities must appear.

One would naturally expect, therefore, that in the Commission's report would be found a list of those shippers, competitors of the Staley Company, who would be unduly prejudiced if cars were placed within the Staley plant without any charge in addition to the line-haul rates. The Commission's report of May 6, 1941, does not undertake to state who the shippers are, or where they are located, who compete with the Staley Company and who would be unduly prejudiced if cars were placed within the plant of the Staley Company without any additional charge.

The reason for this omission is plain. The record contains no facts that would enable the Commission to name

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* *Board of Trade of Chicago* v. *A. T. & S. F. Ry. Co.*, 29 I. C. C. 438, and cases cited; *California Walnut Growers' Assn.* v. *A. & R. R. R. Co.*, 50 I. C. C. 558, 568; *Boston Wool Trade Assn.* v. *Dir. Gen.*, 78 I. C. C. 341, 345.

any competitors of the Staley Company served by appellees or by any other railroad who would be prejudiced if cars were placed within the Staley plant without the impostion of a switching charge in addition to the line-haul rates.

Appellants have not pointed out a line or a section in the Commission's report of May 6, 1941, that lends any support to Finding of Fact No. 5 or Conclusion No. 3. Appellants state that abundant evidence to support this finding and conclusion is contained in those parts of the record in *Ex Parte 104, Part II, Terminal Services,* which are not here before this Court, parts which deal with the switching sevices performed by other railroads at other plants a decade or more ago.

That no such evidence exists is shown by the fact that the Commission did not set out in its report of May 6, 1941 this "abundant" evidence. It made no reference to it, and made no such comparisons as would support these findings. A cursory examination of the Commission's report of May 6, 1941 will show that it was confined to a discussion of the spotting services at the Staley plant, with no reference whatever to such spotting services at other plants on other railroads as might have been developed by the record in *Ex Parte 104, Part II, Terminal Services.* Appellees deal in a succeeding section of this brief with the question whether the record introduced in the lower court was sufficient for the purposes of this case.

If the time has come when the Commission can make what it calls basic findings and conclusions upon which it predicates its order, and omit in its report any statement of the facts which support those basic findings and conclusions, then the Commission has effectively removed its order from the possibility of any fair or adequate review by the courts.

Appellants contend (p. 48) that Conclusion No. 3 is merely a statement of a legal fact and requires no evidentiary support, that once having established a violation of Section 6(7) of the Act, a "preferential service" necessarily flows. This argument is unsound. Violations of Section 6(7) by the giving of rebates are one thing; unjust discrimination in violation of Section 2 and undue prejudice in violation of Section 3 are wholly different things. A concession, or a rebate, may or may not result in unjust discrimination and in undue prejudice. Whether it would so result would depend upon the particular facts in the particular case.

A reference to the decisions of the Commission which were upheld by the Supreme Court, dealing with allowances to warehouse companies, and to the rental of warehouse space at less than cost, in which cases the Commission made findings not only under Section 6(7) but under Sections 2 and 3, shows that parties were present before the Commission complaining that the practices of the carriers resulted in discrimination to them and offered testimony in support of this contention.*

When the Commission in these cases makes findings in which the word "preferential" appears, a word clearly taken from Section 3, it must be deemed to have used that word as a word of art. Unjust discrimination under Section 2 and undue preference under Section 3 imply comparisons and relationships not of a general nature but of a specific nature. The phrases "unjust discrimination" and "undue prejudice" used in an order of the Commission cannot possibly be deemed to be merely statements of a legal fact depending upon a finding under another Section of the Act. Conclusion No. 3 stands alone. It must be deemed to be something more

* *Gallagher* v. *Pennsylvania R. R. Co.*, 160 I. C. C. 563; *Merchants' Warehouse Co.* v. *United States*, 283 U. S. 501; *Propriety of Operating Practices—New York Warehousing*, 198 I. C. C. 134, 216 I. C. C. 291; *B. & Q. R. R. Co.* v. *United States*, 305 U. S. 507.

than a mere glittering generality inserted in the report as a makeweight.

Appellants argue that the decision in *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, is controlling on the point. An examination of appellees' brief in that case, considered in connection with what the court said (p. 406), shows that the point we are making is entirely different. The fundamental argument made by the appellees in the *American Tin Plate Company* case on this point was that the Commission's findings were insufficient and that to support a cease and desist order the Commission must make necessary *quasi judicial* findings of fact that the rate or practice complained of was unreasonable, or unjustly discriminatory, or unduly preferential.

The point appellees make is that the Commission in the case at bar made certain basic findings and conclusions upon which it bottomed, at least in part, its order, but that there are no facts more particularly stated in the report that afford support for those findings and conclusions, and that there is, moreover, no evidence in the record to support them. The evidence is the other way. This was the conclusion reached by the lower court (R. 143).

VII.

The record before the lower court includes all the testimony offered before the Commission at the hearings involving switching service at the Staley Company's plant.

The Commission in its report of May 6, 1941 in the case at bar makes no mention of any facts other than those contained in that record.

Appellants argue (p. 54) that in deciding that the Commission's Conclusion No. 3 as to "preferential service not accorded shippers generally" (R. 43) was unsup-

ported by evidence, the lower court based its decision upon a partial record.

Appellants refer (p. 56) to the principle that Courts may review orders of the Commission to see whether the evidence supports the findings only when the whole record is before the Court, since the part of the record not before the Court may provide the needed support. Appellees have no quarrel with this principle.

The fact of the matter is that there was actually a more complete record before the Court than was necessary for the determination of the issues presented. Appellees' complaint prayed for an injunction annulling and setting aside the Commission's order of May 6, 1941. That order was issued under the following heading: *"Investigation and Suspension Docket No. 4736, Switching Charges at Decatur, Ill."* (R. 46). The order of May 6, 1941 was entered in *I. & S. Docket 4736,* and was not an order entered in *Ex Parte 104, Part II, Terminal Services,* although this latter proceeding was heard along with *I. & S. Docket No. 4736,* and was made the title of the proceeding (R. 17). The Commission itself at the end of its report of May 6, 1941 said (R. 43):

> "An order will be entered requiring cancellation of the suspended schedules. No order is necessary in the title case."

The order which the lower court set aside, therefore was an order entered in *I. & S. Docket No. 4736.* The entire record made in this proceeding was before the court. It was the only record needed by the court in considering the issues raised in appellees' complaint. However, since *Ex Parte 104, Part II, Terminal Services,* was heard along with *I. & S. Docket No. 4736,* appellees also included all parts of the record in that proceeding dealing with the Staley plant at Decatur. The record includes the

testimony offered at the hearings held in 1931 and 1932 (R. 164-241), upon which the Commission issued its report of May 22, 1936, in *A. E. Staley Mfg. Terminal Allowance,* 215 I. C. C. 656, and the testimony offered at the hearing in Chicago on June 28, 1938 (R. 242-370). These records, together with the record made in the joint proceedings of *I. & S. Docket No. 4736* and *Ex Parte 104, Part II, Terminal Services,* at the hearings held in Decatur in April 1940 (R. 370-889), constitute the complete record of the testimony submitted to the Commission respecting the terminal services at the Staley plant.

Appellees did not offer in evidence before the lower court those portions of the records in *Ex Parte 104, Part II, Terminal Services,* which dealt with the terminal services at various plants scattered throughout the country and which consisted of many thousands of pages. This evidence had nothing to do with the issues before the lower court.

It is of the greatest significance that the Commission in its report of May 6, 1941 (R. 17-46) refers to no facts that are not contained in the record submitted to the lower court. An examination of the records of the hearing held in Chicago in 1938 (R. 242-370) and in Decatur in 1940 (R. 370-889), will show that each and every statement made by the Commission in its report of May 6, 1941 was bottomed upon these two records. The Commission itself, as shown by its report, made no use of any other portions of the record in *Ex Parte 104, Part II, Terminal Services,* in arriving at its decision of May 6, 1941. Certainly the lower court, therefore, had no use for them when reviewing the Commission's report and order.

Appellants state (p. 57) that obviously the partial record considered by the lower court did not contain the evidence as to the several hundred industrial plants

which had been investigated, the evidence as to which was contained in the whole record. The Commission makes no reference in its report of May 6, 1941 to any facts dealing with the terminal services at these several hundred industrial plants or any of them which have been investigated.

Appellants refer to the decision of this Court in *Mississippi Valley Barge Line Co.* v. *United States,* 292 U. S. 282, in which this Court said (p. 286) that:

> "The Federal rule is that the findings of the Commission may not be assailed upon appeal in the absence of the evidence upon which they were made."

All the evidence upon which the findings of the Commission in this case were made was before the lower court, and that court, in order to pass upon the issues before it, required no record other than the record that the Commission itself used in writing its report and order.

CONCLUSIONS.

Appellees do not ask this Court to determine what terminal services they are legally obligated to render under their line-haul rates at the Staley plant, at any competing plants in Decatur, or at competing plants at other points served by appellees. Appellees do not ask the Court to turn itself into an administrative tribunal. They do not ask this Court for a decree that would permanently remove the switching charge from the Staley Company. Nor do they ask for a decree that would require the imposition of a similar charge at the plants of the Staley Company's competitors.

Appellees ask that the decree of the lower court setting aside and annulling the Commission's order of May 6, 1941, be affirmed to the end that the Commission may

be in a position to reconsider the whole situation, and to carry out the duty and obligation imposed upon it of applying and enforcing not only Section 1 of the Act but Sections 2 and 3 thereof. And all this to the end that the great purposes of the Act, the removal of unjust discrimination and undue prejudice, may be accomplished, and that appellees may not be made the means by which an inequality in treatment is continued over a period of more than six years as between the Staley Company, on the one hand, and its competitors and other plants, on the other. How this equality in treatment shall be brought about is a matter for the determination of the Commission. The primary purposes of the Interstate Commerce Act remain unfulfilled until this equality has been achieved.

The Commission has had ample time and every reasonable opportunity since 1937, when a charge was first imposed against the Staley Company for the placement of cars within its plant pursuant to the Commission's findings in *A. E. Staley Mfg. Co. Terminal Allowance*, 215 I. C. C. 656, to make the necessary investigations and to determine how this equality in treatment should be brought about. It failed to do so up to the entry of the decree of the lower court, even though the matter had repeatedly been pressed upon its attention both by petitions filed by the Staley Company and by appellees in tariffs, hearings, briefs, and oral argument.

It was not until July 31, 1943, after the entry of the lower court's decree in the case at bar, that the Commission instituted an investigation respecting the switching services at plants that compete wth the Staley Company. But it did nothing towards placing the Staley Company upon an equality with its competitors pending the result of this investigation. Thus appellees have been required to leave the Staley Company "helpless in

the interval," to use the language of this Court in *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 499.

The Commission in the case at bar has not "employed the statutory standards" (*United States* v. *Carolina Carriers Corp.*, 315 U. S. 475) which Congress set up in the Interstate Commerce Act to guide and control the Commission's action. The Commission's order of May 6, 1941, does not reflect the application of the Interstate Commerce Act in a "just and reasoned manner." (*Gray* v. *Powell*, 314 U. S. 402, p. 411.)

The District Court in concluding its opinion in the case at bar said (p. 138):

> "* * * The Commission in its purpose to do justice to the carriers has inadvertently brought about such flagrant injustice to the intervening shipper as to shock the conscience of a court of equity. So far as we know, this precise question has never been before any court, but with a firm belief in the doctrine that no wrong shall exist without a remedy it seems to us that the Commission must meet the problem head on and devise some over-all method of dealing with competitive industries that will eliminate the injustice here so apparent. Otherwise, the purpose of the Act will be thwarted and the resultant inequities will outweigh the evils sought to be corrected. See *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 499."

The wrong developed by the record in this case cries for righting. Appellees respectfully submit that the decree of the lower court was right and should be affirmed.

Respectfully submitted,

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APPENDIX I.

Part I, Interstate Commerce Act, Act of February 4, 1887, c. 104, 24 Stat. 379, as amended.

Section 1(5) (a) provides:

> "All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful." 49 U. S. C. 1(5) (a).

Section 1(6) provides:

> "It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful." 49 U. S. C. 1(6).

Section 2 provides:

"That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful." 49 U. S. C. 2.

Section 3(1) provides:

"It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description." 49 U. S. C. 3(1).

Section 6(7) provides:

"No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this

part, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges, which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs." 49 U. S. C. 6(7).

Section 13(2) provides in part:

"Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed

because of the absence of direct damage to the complainant." 49 U. S. C. 13(2).

Section 15(1) provides:

"That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged; and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed." 49 U. S. C. 15(1).

Section 15(13) provides:

"If the owner of property transported under this part directly or indirectly renders any service connected with such transportation, or furnishes any any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this part and shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section." 49 U. S. C. 15(13).

APPENDIX II

Name of Case	Citation	Location	Date Decided
IRON AND STEEL INDUSTRIES			
PITTSBURGH DISTRICT			
1. Pittsburg Steel Co. Terminal Allowance	209 ICC 87 (9th Suppl.)	Monessen, Penna.	May 14, 1935
2. Allegheny Steel Co. Terminal Allowance	209 ICC 273 (11th Suppl.)	Brackenridge, Penna.	June 7, 1935
3. American Sheet & Tin Plate Co. Terminal Allowance (3 plants)	209 ICC 719 (18th Suppl.)	Vandergrift, Penna. Scottsdale, Penna. Wellsville, Ohio	July 5, 1935
4. West Leechburg Steel Co. Terminal Allowance	210 ICC 213 (35th Suppl.)	Leechburg, Penna.	July 29, 1935
IRON AND STEEL INDUSTRIES			
OUTSIDE PITTSBURGH DISTRICT			
1. Interlake Iron Corp. Terminal Allowance	209 ICC 51 (1st Suppl.)	Toledo, Ohio	May 14, 1935
2. Sheffield Steel Corp. Terminal Allowance	209 ICC 64 (4th Suppl.)	Kansas City, Mo.	May 14, 1935
3. Keystone Steel & Wire Co. Terminal Allowance	209 ICC 82 (8th Suppl.)	Peoria, Illinois	May 14, 1935
4. Timken Roller Bearing Co. Terminal Allowance	209 ICC 441 (14th Suppl.)	Canton, Ohio (2 plants)	June 24, 1935
5. Weirton Steel Co. Terminal Allowance	209 ICC 445 (15th Suppl.)	Weirton, W. Va.	June 24, 1935
6. Inland Steel Co. Terminal Allowance	209 ICC 747 (19th Suppl.)	Indiana Harbor, Ind.	July 11, 1935
7. Wickwire-Spencer Steel Co. Terminal Allowance	209 ICC 751 (20th Suppl.)	Harriet, N. Y.	July 11, 1935
8. Granite City Steel Co. Terminal Allowance	209 ICC 761 (22nd Suppl.)	Granite City and Madison, Illinois	July 11, 1935

	Name of Case	Citation	Location	Date Decided
9.	Great Lakes Steel Corp. Terminal Allowance	210 ICC 103 (30th Suppl.)	Ecorse (Detroit) Mich.	July 12, 1935
10.	Interlake Iron Corp. Duluth, Minnesota, Terminal Allowance	210 ICC 205 (33rd Suppl.)	Duluth, Minn.	July 29, 1935
11.	Wheeling Steel Corp. Terminal Allowance	214 ICC 53 (46th Suppl.)	Benwood, W. Va. Martins Ferry, Ohio Steubenville, Ohio Portsmouth, Ohio Yorkville, Ohio Wheeling, W. Va. Beechbottom, W. Va.	Feb. 3, 1936
12.	William Wharton, Jr., & Co., Inc. Terminal Allowance	215 ICC 623 (50th Suppl.)	Easton, Penna.	May 19, 1936
13.	Midvale Co. Terminal Allowance	215 ICC 626 (51st Suppl.)	Nicetown, Penna.	May 19, 1936
14.	Acme Steel Co. Terminal Allowance	215 ICC 373 (52nd Suppl.)	Riverdale, Ill.	Apr. 28, 1936
15.	Warren Foundry & Pipe Corp. Terminal Allowance	215 ICC 653 (54th Suppl.)	Phillipsburg, N. J.	May 21, 1936
16.	American Steel Foundries Terminal Allowances	216 ICC 13 (57th Suppl.)	Indiana Harbor, Ind.	May 28, 1936
17.	Republic Steel Corp. Terminal Allowance	253 ICC 595 (66th Suppl.)	Buffalo, N. Y.	Nov. 7, 1942
18.	Hanna Furnace Corp. Terminal Allowance	253 ICC 613 (67th Suppl.)	Buffalo, N. Y.	Nov. 11, 1942
19.	Tonawanda Iron Corp. Terminal Allowance	255 ICC 231 (68th Suppl.)	North Tonawanda, N. Y.	Feb. 13, 1943
20.	Sharon Steel Hoop Co. Terminal Allowance	Mimeographed	Sharon, Penna.	Sept. 11, 1943
21.	Wickwire Bros. Inc. Terminal Allowance	Mimeographed	Cortland, N. Y.	Sept. 11, 1943
22.	Worth Steel Co. Terminal Allowance	Mimeographed	Claymont, Dela.	Sept. 11, 1943

Name of Case	Citation	Location	Date Decided
OIL REFINERIES			
1. Standard Oil Co. of Louisiana Terminal Allowance	209 ICC 68 (5th Suppl.)	Baton Rouge, La.	May 14, 1935
2. Magnolia Petroleum Co. Terminal Allowance	209 ICC 93 (10th Suppl.)	Chaison, Texas	May 14, 1935
3. Humble Oil & Refining Co. Terminal Allowance	209 ICC 727 (13th Suppl.)	Baytown, Texas	July 8, 1935
4. Mexican Petroleum Corp. of Louisiana Terminal Allowance	209 ICC 394 (16th Suppl.)	Destrehan, La.	June 25, 1935
5. Gulf Refining Co. Terminal Allowance	209 ICC 756 (21st Suppl.)	Port Arthur, Texas	July 11, 1935
6. Texas Co. Terminal Allowance at Houston, Texas	209 ICC 767 (24th Suppl.)	Houston, Texas	July 11, 1935
7. Texas Company Terminal Allowances at Port Arthur, Texas	213 ICC 583 (44th Suppl.)	Port Arthur, Texas Port Neches, Texas Port Island, Texas	Jan. 15, 1936
BRIDGE AND FABRICATING COMPANIES			
1. Marion Steam Shovel Co. Terminal Allowance	210 ICC 475 (41st Suppl.)	Marion, Ohio	Aug. 23 1935
2. American Bridge Co. Terminal Allowance	Mimeographed	Ambridge, Penna. Pencoyd, Penna. Trenton, N. J. Elmira Heights, N. Y. Toledo, Ohio	Sept. 11, 1943
3. McClintic-Marshall Corp. Terminal Allowance.	Mimeographed	Leetsdale, Penna.	Sept. 11, 1943

Name of Case	Citation	Location	Date Decided
	LUMBER COMPANIES		
1. Great Southern Lumber Co. Bogalusa Paper Co. Terminal allowance.	209 ICC 793 (27th Suppl.)	Bogalusa, La. (2 plants)	July 12, 1935
2. Goodman Lumber Co. Terminal Allowance	214 ICC 89 (45th Suppl.)	Goodman, Wis. (also includes plant of Cliffs Chemical Co.)	Feb. 8, 1936
3. Red River Lumber Co. Terminal Allowances	234 ICC 287 (59th Suppl.)	Westwood, Calif.	July 26, 1939
4. Neils Lumber Company Terminal Allowance	238 ICC 543 (60th Suppl.)	Libby, Montana	May 27, 1940
5. Medford Corporation Terminal Allowances	241 ICC 407 (61st Suppl.)	Medford, Oreg.	Sept 4, 1940
6. Chiloquin Lumber Co. Terminal Allowance	241 ICC 495 (62nd Suppl.)	Chiloquin, Oreg.	Sept. 28, 1940
7. Lamm Lumber Co. Terminal Allowances	245 ICC 575 (63rd Suppl.)	Modoc Point, Oreg.	May 27, 1941
8. Silver Falls Timber Co. Terminal Allowances	245 ICC 509 (64th Suppl.)	Silverton, Oreg.	May 27, 1941
9. Inland Empire Paper Company, Terminal Allowance	246 ICC 127 (65th Suppl.)	Millwood, Wash.	July 9, 1941
10. Snoqualmie Falls Lumber Co. Terminal Allowance	245 ICC 113 (Suppl. Report without number)	Snoqualmie, Wash.	Apr. 17, 1941

Name of Case	Citation	Location	Date Decided
MEAT PACKING COMPANIES			
1. John Morrell & Co. Terminal Allowance	215 ICC 431 (48th Suppl.)	Ottumwa, Iowa	May 8, 1936
2. Kingan & Company Terminal Allowance	255 ICC 531 (69th Suppl.)	Indianapolis, Ind.	June 2, 1943
MINING COMPANIES			
1. Iron Ore Mining Companies, Stock Pile Allowances	210 ICC 254 (31st Suppl.)	Keewatin, Minn. Kelly Lake, Minn. (2) Nashwauk, Minn. (5) Lucknow, Minn. Calumet, Minn. Virginia, Minn. South Hibbing, Minn.	Aug. 12, 1935
2. Louisiana Development Co. Terminal Allowances	218 ICC 276 (58th Suppl.)	Winfield, La.	Aug. 24, 1936
PAVING MATERIAL COMPANY			
1. Western Paving Co. Terminal Allowance	209 ICC 770 (25th Suppl.)	Dougherty, Okla.	July 11, 1935
2. Uvalde Rock Asphalt Co. Terminal Allowance	218 ICC 271 (47th Suppl.)	Cline, Texas Blewett, Texas	Aug. 24, 1936
PLATE GLASS			
1. Pittsburgh Plate Glass Co. Terminal Allowance	209 ICC 467 (17th Suppl.)	Ford City, Penna.	June 25, 1935
2. Pittsburgh Plate Glass Co. Terminal Allowance	210 ICC 527 (43rd Suppl.)	Crystal City, Mo.	Sept. 12, 1935
PLUMBING MANUFACTURER			
1. Crane Company Terminal Services	210 ICC 210 (34th Suppl.)	Chicago, Illinois	July 29, 1935
RAILROAD EQUIPMENT			
1. Standard Steel Car Co. Terminal Allowance	210 ICC 296 (39th Suppl.)	Hammond, Ind.	Aug. 12, 1935
2. General American Tank Car Corp. Terminal Allowance	210 ICC 383 (40th Suppl.)	East Chicago, Ind.	Aug. 14, 1935

Name of Case	Citation	Location	Date Decided
COKE AND BY-PRODUCTS			
1. Minnesota By-Products Coke Co. Terminal Allowance	209 ICC 421 (12th Suppl.)	St. Paul, Minn.	June 24, 1935
2. St. Louis Gas & Coke Corp. Terminal Allowance	209 ICC 797 (28th Suppl.)	Granite City, Ill.	July 12, 1935
3. Alabama By-Products Corp. Terminal Service	210 ICC 644 (36th Suppl.)	Tarrant, North Birmingham, Alabama	Sept. 25, 1935
4. Chicago By-Products Coke Co. Terminal Allowance	216 ICC 8 (56th Suppl.)	Chicago, Illinois	May 28, 1936
AUTO & AUTO PARTS			
1. Ford Motor Company, Terminal Allowance	209 ICC 77 (7th Suppl.)	Detroit, Michigan	May 14, 1935
2. Studebaker Corp. Terminal Allowance	210 ICC 137 (32nd Suppl.)	South Bend, Ind.	July 19, 1935
3. A. O. Smith Corporation, Terminal Allowance	215 ICC 534 (53rd Suppl.)	Milwaukee, Wis.	May 19, 1936
POWER PLANTS			
1. Detroit Edison Company, Terminal Allowance	209 ICC 55 (2nd Suppl.)	Detroit, Michigan	May 14, 1935
2. Kansas City Power & Light Company Terminal Allowance	210 ICC 103 (29th Suppl.)	Kansas City, Mo.	July 19, 1935
3. Commonwealth Edison Co. Terminal Allowance	215 ICC 173 (49th Suppl.)	Chicago, Ill. (5 plants in Chicago)	April 1, 1936
CEMENT PLANTS			
1. Universal Atlas Cement Co. Terminal Allowance	209 ICC 61 (3rd Suppl.)	Steelton, Minnesota (within Duluth Switching District.)	May 14, 1935
2. Petoskey Portland Cement Co. Terminal Allowance	210 ICC 242 (37th Suppl.)	Petoskey, Michigan	Aug. 6, 1935
3. Louisville Cement Co. Terminal Allowance	210 ICC 293 (38th Suppl.)	Speeds, Indiana	Aug. 12, 1935

Name of Case	Citation	Location	Date Decided
CELOTEX MANUFACTURING			
1. Celotex Co. Terminal Allowance	209 ICC 764 (23rd Suppl.)	Marrerro, La.	July 11, 1935
COTTON MILLS			
1. Pacolet Mfg. Co. Operating Allowance	210 ICC 475 (41st Suppl.)	Pacolet, S. C.	Aug. 23, 1935
COMMERCIAL DOCK COMPANY			
1. East Chicago Dock Terminal Co. Terminal Allowance	209 ICC 73 (6th Suppl.)	E. Chicago, Ill.	May 14, 1935
STORAGE & TERMINAL COMPANY			
1. Detroit Harbor Terminals, Inc. Terminal Allowance	209 ICC 787 (26th Suppl.)	Detroit, Michigan	July 13, 1935
GRAIN PRODUCTS			
1. A. E. Staley Mfg. Co. Terminal Allowance	215 ICC 656 (55th Suppl.)	Decatur, Illinois	May 22, 1936

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY; A. E. STALEY MANUFACTURING COMPANY,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF FOR A. E. STALEY MANUFACTURING COMPANY.

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OPINION BELOW

The opinion of the statutory District Court (Judges Briggle, Lindley and Evans) is in the printed record (R. 134-139) and is reported in 51 F. Supp. 141. The particular report of the Interstate Commerce Commission here involved (R. 17-46) is reported 245 I.C.C. 383.

JURISDICTION AND STATUTE INVOLVED

The jurisdiction of this Court is set forth in the brief for appellants, also in the brief for appellees, the railroad companies who were plaintiffs below. The same may be said as to the pertinent provisions of the Interstate Commerce Act. In the interest of brevity those matters will not be repeated herein. Provisions of the State and Federal grain inspection laws (to which reference is made in Sec. II of Argument) are reproduced in appendix hereto.

QUESTIONS PRESENTED

The ultimate question is the validity of the Interstate Commerce Commission's order (R. 46) of May 6, 1941, in that body's suspension proceeding No. 4736 whereby A. E. Staley Manufacturing Company was committed to the continued discrimination of being required to pay a $2.50 per car spotting charge without parallel in any industry. This charge had been established November 15, 1937 (R. 381, 865); and the plaintiff railroads in vain had sought leave to withdraw the tariff in order that the Staley Company may have the same switching services which they accord all other industries under the established freight rates.

The validity of the Commission's aforesaid order can be and is questioned on many scores, any one of which questions deserves an answer which nullifies the assailed order. These questions are enumerated and developed in the brief of railroad appellees. This brief, which is presented on behalf of A. E. Staley Manufacturing Co., the object and victim of the Commission's order in this case, will raise two outstanding points

which involve the effect of the Commission's order upon the Staley Company in particular.

The first point is that the Commission acted arbitrarily when it compelled the carriers to institute and collect a spotting charge from Staley, while permitting them to refrain from making such charge from any other industry.

The second point is that the Commission erred and exceeded its statutory powers when it declared as a matter of law that transportation to and from the Staley plant at Decatur ends and begins in the railroad yards outside the Staley plant.

STATEMENT

The brief of appellees will provide this Court with the prescribed full statement of the case; only undue formality would be served by paraphrasing that statement here. It is necessary in these pages only to state briefly the situation revealed by the detailed statements of the appellees as it affects the questions outlined above.

Many years ago the Staley Company received from the carriers an allowance for performance of work in spotting cars within its plant. The Commission declared this allowance to be unlawful, (215 I.C.C. 656) holding that the transportation obligation of the carriers under the freight rates ended at interchange tracks (since taken up) beyond which Staley performed the switching for which the allowance had been paid. The allowance was discontinued June 23, 1936. (R. 19)

Considerable changes were made in the physical facilities and freight switching methods at the Staley plant, and the Staley Company called on the carriers

to come in and perform the service of spotting. This the carriers did and continue to do, by one means or another, observing every suggestion of the Commission's staff as to methods. (R. 631-6) At this point, however, the Commission stepped in and compelled the carriers to make a separate and additional charge for the performance of the spotting service in delivering inbound and receiving outbound cars; and on November 15, 1937 a tariff was published providing a charge of $2.27 per car (later increased to $2.50) for placing shipments at loading and unloading points within the Staley plant. No similar charge was then or later established for any other plant at Decatur or anywhere else in the United States, regardless of the nature and extent of the service performed.

At the time this charge was initiated, both the Staley Company and the railroad companies believed it to be improper in all respects, and particularly because of the discriminatory feature involved in the fact that it applied only to Staley. Yet the Commission prevailed, and belittled the discriminatory character of the situation by promising to take appropriate action in the case of other industries including those which compete with Staley in the grain industry. The lengths to which the Commission went to assure all parties that it would actively and promptly equalize this situation by appropriate action throughout all similarly situated industries is illustrated by statements which it made at the time. (R. 638-9) When the Staley Company first sought to have the carriers do the spotting work, it filed a mandamus petition in the District Court at Springfield to that end. The petition was heard before Judge Briggle, a member of the lower court in this case.

The carriers appeared in reply to the petition and

stated that they would perform the service demanded but that Staley would have to pay extra. Staley Company pointed out there the prejudicial and unjustly discriminatory nature of such a course, but the Commission (which had intervened in the case) claimed exclusive jurisdiction over the issue raised by that complaint. The attorney for the Commission was asked by the Court how long it would be before the Commission would act, and he assured the Court that there would be no delay. This was on February 12, 1938. (R. 639)

Since then, a period of nearly seven years between the establishment of the charge against the Staley Company and the date of the lower court's decree in this case, the Commission took no active steps and made no further investigations looking either to general or specific adoption of such spotting charges at other plants. No hearings were had on such questions and no decisions dealt therewith. The Commission was idle. It let Staley wait, with diminishing confidence, for the promised action looking to equal treatment of industries in general, including Staley. The subsequent history of the matter shows occasions upon which Staley itself was before the Commission on hearing and appellants may suggest this constituted action. In reality it constituted only such action as was necessary to keep the Commission's heel squarely on the neck of the Staley Company, but without so much as a look in the direction of any other company.

Finally, the three appellee railroads, Wabash, Illinois Central and Illinois Terminal, sought to end the discrimination by canceling the charge. The cancellation was forbidden by the Commission's order of May 6, 1941. The railroad companies have now assailed that order and the Staley Company has intervened therein (R. 84-97) seeking relief from the unequal treatment

which it suffers in its role of "guinea pig" for the Commission's investigators.

The statutory three-judge Court holds that under such facts the Commission's order is invalid.

SUMMARY OF ARGUMENT FOR INTERVENER

In the Court below and in this Court the Staley Company has not contended that the report and order condemning the allowance which was paid to the Staley Company prior to September 1936 was invalid. Nor has it attacked the broad principles and conclusions of the original report of the Commission in Ex Parte 104, Part II, announced May 14, 1935, 209 I.C.C. 11.

The Staley Company at all times has endeavored to make clear that if and when the railroads adopt a new plan of spotting charges, or if and when the Commission prescribes or brings about a fair plan of spotting charges (not necessarily of universal application), this company will of course submit to such charges along with other shippers. But to single out this industry as one of many in a highly competitive field and require it to be subjected to a tariff charge not imposed on any other industry,* further, to require continued exaction of such charge over a period of seven years of complete inaction by the Commission as to any other industries or any general plan, constitutes arbitrarily discriminatory administration of the law. The Commission is forcing the carriers concerned to violate the very law it is supposed to enforce.

Moreover, still accepting the prior decisions as to al-

* Every witness agreed that there is no other plant where any spotting charge is made by carriers. Testimony on pages 424, 505, 552 and 625 is illustrative. Government witnesses named no industry where such charge is in effect.

lowances, and guiding principles, this intervener directs the Court's attention to the manifest error in law of the Commission's assumption that as to grain traffic, which moves directly to and from the Staley elevator tracks, an indefinite (and inaccessible) point out in the operating yards of the Wabash Railway is to be regarded as the place of delivery. The requirements of grain inspection laws and the physical impossibility either of loading or unloading in such yards, or of gaining access to the cars, estop the Commission from such a decision. All other grain to all other shippers in Decatur (as elsewhere) is delivered, after government inspection, at the unloading chutes, under the compensation afforded by the freight rates. Consequently, although the Court will hold that the Commission has power to decide at what precise point transportation begins and ends under the freight rates, manifestly that decision in this case is arbitrary and beyond the Commission's power. It is as if the Commission said that, for Staley, the transportation ends out on the prairies of Illinois or at some distant station.

ARGUMENT.

I.

The Commission has been guilty of "shocking discrimination" in its administration of the Act in this case.

The opinion of the Court below clearly states the basis of its conclusion that the orders of the Commission have been working a discrimination against the Staley Company, which shocked the conscience of the Court (R. 134). The findings of fact upon which the opinion rests (R. 128-132) follow the history of the subject matter in detail and provide a clear exposition of the facts.

It requires no elaborate statement to demonstrate the administrative discrimination complained of. It consists of the singling out of Staley Company by the Commission as the starting point for a program of new and unprecedented spotting charges, followed by complete inactivity as to any other plants and utter abandonment of the program so far as equal treatment of all industry is concerned. This situation has lasted seven years and has become unbearable to Staley, which has heretofore held hope that the Commission would either retract or proceed. The court below found it shocking.

The judges by whom this decision was entered were familiar with the subject matter of these cases through their having sat in the prior cases involving allowances.*

* The decision of the District Court in the *Inland Steel Company case*, 23 F. Supp. 291 (affirmed 306 U. S. 153) was by Judge Sparks, Wilkerson and Lindley; the decision in the *Goodman Lumber Company case* (affirmed 301 U. S. 669) was by Judge Evans, Geiger and Barnes; the decision in *Keystone Steel and Wire Allowance case* was by Judges Briggle, Evans and Page. So that Judges Evans, Lindley and Briggle were fully conversant with the governing decisions of this Court in *American Sheet & Tin Plate case*, 301 U. S. 402.

Indeed, Judge Lindley and Briggle had joined in upholding decisions of the Commission condemning allowances at other specific industries, as had Judge Evans, who dissented from the opinion but not the findings (R. 143) of the Court below in this cause. From such approving views of the Commission program these judges were moved to complete disapproval by the shocking discrimination they found in this case.

The appellants attempt in their brief to explain this away in 17 pages of argument. First, they characterize the ruling below as having the effect of holding that

> "where the Commission discovers a prohibited rebate granted a particular industry, it cannot, under conceded authority, take action to stop it until every other rebate, claimed as similar and made to competing, industries, is *simultaneously* stopped by the Commission's action taken on its own motion." (Italics ours.)

Several pages ring the changes on this theme, and appellants seek to put Staley in the ridiculous role of murderer who complains that he should not be hanged until all other murderers are brought to justice.

Of course the Court below intended no such sweeping announcement and the opinion and decree are of no such effect.

When the Court spoke, for more than six years Staley had paid this charge while no one else did, big or small. We submit there is quite a difference between requiring "simultaneous" action against all industries, and objecting because no action is taken nearly seven years after the first "sample" spotting charge.

Next the appellants argue that they merely pointed the way in the Staley case which was to provide a

"sample" and that it was the duty of the carriers to follow up at other plants. They admit:

> "That some inequality may result from this order and from the fact that other cases have not been decided by the Commission—,"

but it is argued that the carriers should have taken the initiative to put in spotting charges elsewhere, or failing that, Staley should have filed a complaint.

It is no answer to a charge of dereliction of duty that "George should have done it", and it does not become counsel for the Interstate Commerce Commission to argue that unequal treatment of shippers has resulted from non-cooperation of the railroads. The argument begs the question, which is whether the Commission may consciously remain complacent to unequal treatment when the initial inequality was brought about by its own order.

The next part of appellants' explanation has to do with the supposed enormity of the task of putting in spotting charges everywhere that the Commission may think they should be made. That problem was no less present prior to 1937 than it is present today; and only Staley has been subjected to a charge! On the other hand, the Government brief reveals no activity by the Commission in dealing with spotting charges at other plants, or as a general plan. The record shows the very considerable amount of time and work of inspectors, examiners and commissioners during the years 1937-43, going after the Staley Company, studying conditions at its plant and forcing reluctant carriers to continue the charge. But the record is silent on any efforts to investigate other industries—for there had been none. Extreme diligence to hold Staley—extreme unconcern with any other industry.

Attached to the brief for appellants is a list of decisions entitled "Citations of Ex Parte 104-II, and supplements thereto," which at first glance would create the appearance the Commission has been reasonably active. The Court will discover, however, that of the numerous decisions which are listed, the first sixty cases preceded the date of establishment of the Staley spotting charge, November 15, 1937. Since that date there has not been a single decision of the Commission (except Staley decisions) dealing with spotting *charges;* all of the subsequent decisions have dealt with *allowances,* either to sawmills (seven of them) or steel plants (three in number) and one meat packer. The last five cases listed in the appendix to the Government brief are only tentative reports, with orders to show cause attached thereto, and these deal with allowances to steel plants. Accordingly, the list of activities in the appendix of the Government brief shows that right down to date the Commission has not done a thing towards spotting charges anywhere but at the Staley plant.

It is true that subsequent to the decree of the lower court herein, the Commission has entered upon certain hearings as to conditions at certain other selected plants, a fact to which we would hesitate to allude were it not for the incorporation by appellants' counsel as an appendix to their brief of extracts from the recent 57th Annual Report of the Commission. That extract and the fact of recent hearings the appellants will cite as evidence of their good faith in proceeding with the promised program looking toward equal treatment under the law. To Staley, and to the lower court which heard the same old story seven years ago, it has a hollow ring and only emphasizes the failure of the Commission to do anything about the matter.

Why has the Commission done nothing? Why has it not at least forced a spotting charge on one or two other industries (competing or non-competing), if only to make clear that there is nothing personal or unique in the Staley situation? A spotting charge could have been compelled at a few more plants as easily as against the Staley Company, and we may wonder that the Commission did not use several "samples", if only for clarification of its intentions.

Appellants explain at length that they expected the railroads to "cooperate" and extend the spotting charge idea. The fact is that the idea was not extended; for some reason it did not catch, and the Commission has watched the spark for seven years without action. "This was not a full discharge by the Commission of an immediate responsibility." *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 409.

II.

The Commission erred as a matter of law in declaring that transportation ends outside the Staley plant.

Previous decisions in related cases have expressed clearly the principle that the Commission has the power, on a proper record, to decide what constitutes a reasonably convenient place for receipt and delivery of freight at a plant like that of the Staley Company. Appellants make the most of that principle, and we do not dispute either its existence or its wisdom. But it is important to keep the thinking clear on the point. The stated principle obviously does not mean that the Commission may arbitrarily assign any point, or unnecessarily prescribe a manifestly ridiculous place as the beginning and end of the carrier's transportation obliga-

tion. Yet that is what they have done in this case. Relying on the reasonable provisions of the law, they have given it an unreasonable twist. We find this error made manifest by the effect which it has upon the grain traffic.

Section XIV of the intervention of the Staley Company (R. 37) describes this phase of its operations and presents a glaring example of the illegality of the carriers' practice required by the Commission's order, namely the imposition of a placement charge on shipments of grain, for moving the cars from the Railway general yards to tracks just within the plant, approaching the elevator.

This section of the petition is supported by the record, shows that the Staley Company operates in its plant at Decatur large grain elevators in which it conducts a merchant elevator business, receiving, storing, treating and handling grain which is moved inbound and outbound in both state and interstate commerce, for account of the divers owners of said grain. These elevators are served by four parallel tracks suitably laid out for the handling of carloads containing shipments of grain. Car pullers are provided by Staley Company whereby Staley spots the cars at its own expense and at its own convenience under the chutes and apparatus for loading and unloading. The service by the carriers consists only of placing strings of inbound cars on the tracks approaching the elevator and removing loaded and empty cars from the tracks, in the simplest and most economical manner. (R. 255-7, 622)

Under the laws of the State of Illinois and of the United States.* grain moving by railroad has to be

* Illinois Constitution of 1870, Article XIII; Smith-Hurd Ill. Ann. Stat., Ch. 114, Sec. 111, *et seq.;* U. S. Code Ann., Title 7, Ch. 3, U. S. Grain Standards Act approved August 11, 1916. See appendix to this brief.

inspected at market points and destinations, such as Decatur, and such inspection, by common custom and practice and according to law, is made at points designated by the railroads on tracks in the railroad yards.

In accordance with this law, all carload shipments of grain moving into the City of Decatur move in trains indiscriminately to the railroad yards, and after inspection in said yards the grain is moved on by the carrier to the elevator or unloading dock of the consignee. This subsequent movement is performed in the City of Decatur for and to all elevators, plants and unloading points free of any charge other than the established freight rate, excepting if it moves to the aforesaid elevators of the Staley Company, in which case the charge of $2.50 has been imposed.

The statutes of the United States and of the State of Illinois in essence require two things of the railroads on their grain traffic, *inspection* of the grain by government inspectors in railroad cars and *delivery* of the grain for unloading at the elevators. To hold, as the Commission does in its broad conclusions in this case, that grain shipments moving to the Staley elevator in Decatur are *delivered* out in the Wabash terminals, is to require violation of the express terms of the state and Federal Statutes.

The Grain Standards Act, U. S. Code Ann. Title 7, Ch. 3, provides for grades and inspections, cooperative action with the states and use of state inspectors.* The Illinois Law, Ch. 114, Smith-Hurd Ann. Stat., pursuant to Article XIII of the Constitution of 1870 affirmatively requires the railroads of Illinois to deliver grain at warehouses and elevators and to take the grain from ele-

* Pertinent provisions are set forth in appendix to this brief.

vators and warehouses, on whatever tracks located, if accessible to railroad engines; and it provides for inspection of grain while in railroad possession.

All grain moving into and out of Decatur to any and all elevators is inspected and the railroads deliver it and take it from the various elevators. The Commission's decision attempts to hold that movements from railroad yards to the Staley elevators are not transportation and requires an accessorial charge therefor which seems plainly in violation of the statutes.

The facts of this situation bring the case clearly within the law as determined in *Great Northern Railway Company* v. *Merchants Elevator Company*, 259 U. S. 285.

That case involved construction and interpretation of railroad tariffs and it was held that preliminary resort to the Commission was not essential to support the jurisdiction of the Court. The point of the case which is important here is its recognition of the controlling force and effect of the grain inspection laws of the United States and of the State of Minnesota, the latter analogous to Illinois laws. And that *delivery* of grain is not even constructively accomplished at the point of inspection, the true destination being the elevator where the grain is to be unloaded.

As the facts are set forth in the opinion of the Court, written by Mr. Justice Brandeis, the railroad sued for a charge of $5.00 per car on 16 cars of corn which had been shipped from Iowa and Nebraska stations to Willmar, Minn., and after inspection there rebilled to Anoka. The tariff rate from origin stations was the same to Willmar as to Anoka, and Willmar had been named as destination in the original bill of lading only because it is the place at which grain coming into the

State by this route is inspected and graded under the laws of Minnesota and of the United States.

The tariff rules involved in that case are substantially in force today at Decatur, and to the same effect, and the charge was held to be in violation of the tariff rule. The inspection points for grain in the railroad yards of Decatur can no more be regarded as the destination or marking the end of the transportation service than could be the inspection point of Willmar, Minn., on traffic to the elevators at Anoka. The Decatur Milling Company and all other consignees in Decatur have their grain placed opposite their unloading chutes, subsequent to the official inspection, without question that the transportation obligation of the carrier comprehends such delivery.

CONCLUSION.

The brief for appellants seems to attack all railroads vigorously as natural born rebaters. It adopts something of a defeatist tone as it excuses Commission inaction by the plea that the railroads were uncooperative and unsympathetic toward the spotting charge idea:

> "they could, if they were willing to cooperate, establish tariffs providing for equality of charges * * *."

This is a new tone to find in a brief for the Commission. Fifty years ago the railroads may have been a rough lot; today this Court will judicially notice the generally cooperative spirit of their managements. Why, then, don't they cooperate in this matter?

We perceive that the whole idea is recognized by the carriers as being unworkable, unwise and revolutionary. Whether it is that or not we do not argue, and this Court is not called upon to decide. The interesting fact is that the Commission seems to realize that such view is widely held. We suggest that this realization is the real explanation for the Commission's inaction. If they were to force the establishment of spotting charges at more than the one, relatively helpless, shipper the lid would be blown off. Shippers and carriers generally would find themselves involved in the program with a vengeance. And if the Commission's fears are founded, the public opinion would be against it. It is not too much to suppose that opinion would reach congressional halls and result in decisive action there. The Commission works for Congress. It is treading on thin ice, which it sensed to be cracking.

This is perhaps speculation, but it is speculation of a kind that this Court will inevitably consider in its dis-

cerning thinking. It explains realistically the Commission's otherwise inexplicable treatment of this shipper. No speculation whatever is involved in observing the emphasis which the charge of widespread rebating places upon the discrimination involved in making the Staley Company pay a charge for placing cars at its elevator and other points of loading or unloading over these seven long years, to the tune of approximately $80,000, a year (R. 286) while the Commission has done nothing to bring about imposition of a like charge at any plant of competitors or others.

Intervener submits that no error has been shown in the findings of fact unanimously adopted by the Court below and that such findings and the conclusion of law thereon are correct, *wherefore* the decree should be affirmed and the matter remanded for such further relief as the Court below may find appropriate.

Respectfully submitted,

C. C. LeForgee,
Luther M. Walter,
Nuel D. Belnap,
John S. Burchmore,
Solicitors for Intervener-Appellee.

March 4, 1944.

APPENDIX.

The Grain Standards Act, U. S. Code Ann. Title 7, Chapter 3.

Sec. 76. Compulsory use of official standards; exceptions; inspection and grading after shipment; appeal.

Whenever standards shall have been fixed and established under this chapter for any grain no person thereafter shall ship or deliver for shipment in interstate or foreign commerce any such grain which is sold, offered for sale, or consigned for sale by grade unless the grain shall have been inspected and graded by an inspector licensed under this chapter and the grade by which it is sold, offered for sale, or consigned for sale be one of the grades fixed therefor in the official grain standards of the United States: *Provided,* That any person may sell, offer for sale, or consign for sale, ship or deliver for shipment in interstate or foreign commerce any such grain by sample or by type, or under any name, description, or designation which is not false or misleading, and which name, description, or designation does not include in whole or in part the terms of any official grain standard of the United States: *Provided further,* That any such grain sold, offered for sale, or consigned for sale by grade may be shipped or delivered for shipment in interstate or foreign commerce without inspection at point of shipment by an inspector licensed under this chapter, to or through any place at which an inspector licensed under this chapter is located, subject to be inspected by a licensed inspector at the place to which shipped or at

some convenient point through which shipped for inspection, which inspection shall be under such rules and regulations as the Secretary of Agriculture shall prescribe, and subject further to the right of appeal from such inspection, as provided in section 78 of this chapter: *And provided further,* That any such grain sold, offered for sale, or consigned for sale by any of the grades fixed therefor in the official grain standards may, upon compliance with the rules and regulations prescribed by the Secretary of Agriculture, be shipped in interstate or foreign commerce without inspection from a place at which there is no inspector licensed under this chapter to a place at which there is no such inspector, subject to the right of either party to the transaction to refer any dispute as to the grade of the grain to the Secretary of Agriculture, who may determine the true grade thereof. No person shall in any certificate or in any contract or agreement of sale or agreement to sell by grade, either oral or written, involving, or in any invoice or bill of lading or other shipping document relating to, the shipment or delivery for shipment, in interstate or foreign commerce, of any grain for which standards shall have been fixed and established under this chapter, described, or in any way refer to, any of such grain as being of any grade other than a grade fixed therefor in this official grain standards of the United States.

Illinois Statutes, Chapter 114 Railroads and Warehouses:

Sec. 111. Receipt and carriage of grain without distinction.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

That every railroad corporation, chartered by or

organized under the laws of this state or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and load the same either upon its track, at its depot or in any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned.

Sec. 112. Delivery—Penalty.

Every railroad corporation which shall receive any grain in bulk for transportation to any place within the state, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed: Provided, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grains as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. * * *

Illinois Constitution of 1870.

Articles XIII Warehouses:

Sec. 1. Grain elevators as public warehouses.

All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

Sec. 5. Railroads, delivery of grain—Track connections.

All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

Sec. 7. Grain, inspection of.

The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 453

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

WABASH RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY; A. E. STALEY MANUFACTURING COMPANY,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

PETITION FOR REHEARING

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

PETITION FOR REHEARING

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

A. E. Staley Manufacturing Company, intervener appellee, petitions for a rehearing, pursuant to Rule 33, of the decision entered March 27, 1944, reversing the decree

of the statutory court below; and in that behalf petitioner states:

Petitioner does not seek reconsideration or modification of the two basic conclusions stated by the Court and asks that the Court shall clarify its decision and modify the terms, to the end that the decree of the Court below shall not be reversed nor the underlying orders of the Interstate Commerce Commission confirmed.

First, petitioner accepts the decision of March 27, 1944, as reaffirming the doctrines of *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, that the Commission has authority to determine "what is embraced within the service of transportation and what lies outside that service"; where the transportation begins and ends, or what constitutes a reasonably convenient place for receipt and delivery of freight at plants, large or small; further, that each case must be determined upon the particular facts, within the Commission's discretion exercising its administrative powers. As explained below, petitioner questions whether the Court intends to hold that the Commission may declare transportation ended at a place inaccessible to the consignee and contrary to express statutory provisions.

Second, petitioner accepts the Court's conclusion that these matters are determined by Section 6 (7) of the Interstate Commerce Act, so that the Commission's order which in substance requires assessment of a spotting charge against Staley is not invalid because such charge has not been required also at competing plants under like circumstances.

Petitioner is asking the Court to consider a question presented in brief and argument, not reviewed in the Court's opinion and which involves important matters of

fact that are not correctly reflected in the opinion of the Court.

This question relates to clauses in the Commission's findings, incorporated in its order, which prohibit respondent carriers from according Staley any delivery of carload freight beyond a point in the general yards of the Wabash Railroad, a substantial distance away from the Staley plant. This is error, under the *American Sheet & Tin Plate* doctrine; and the error is of peculiar force as related to the large grain traffic moving to and from the Staley merchant elevators. The effect of the Commission's order is to deny Staley Company any delivery of grain under the freight rate.

I.

The Court's opinion after referring to the size of the Staley plants and the movement of cars between the interchange tracks and points of loading and unloading (under former methods), recites (pp. 4-5):

> "Contentions of appellees based on a formal change of control of the interchange tracks by lease from the Staley Company to appellee Wabash Railroad executed subsequent to the Commission's report in *Ex parte* 104, are irrelevant to our present inquiry. After the lease, as before, they continued to be used as interchange tracks and the controlling question is whether the movement from the interchange tracks to points of loading and unloading is a plant service for the convenience of the industry, or a part of the carrier service comparable to the usual car delivery at a team track or siding. The Commission's finding that it is a plant service is supported by evidence and must be accepted as conclusive here.
>
> "Appellees make no other serious contention of want of evidentiary support for the Commission's conclusion that the carrier service ended at the interchange tracks and the District Court found no such lack."

The facts are not as stated but have changed, see below. Nowhere in the opinion is there discovered recognition of the fact that the interchange tracks *are no longer in existence,* and no placements are first made thereon, but all cars, whether grain or other freight, move to and from Wabash Railroad yards from and to various unloading or loading points within the Staley plant.

The Commission's findings and conclusion appears to have been skillfully drawn so as to require continued imposition of the $2.50 charge on cars moving *directly* to and from the Staley plant, even as to the grain which is simply shunted in strings of ten or more cars and subsequently placed by Staley at its elevator chutes through the medium of plant-operated car pullers. The findings read (R. 43) (*our italics*):

> "2. That all services between the Burwell yard *or the storage or general yard of the Wabash* and points of loading or unloading within the plant area of the Staley Company are plant services for the Staley Company and not common-carrier services covered by the line-haul rates and charges of respondent carriers.
>
> "3. That the performance by respondents, without charge in addition to the line-haul rates and charges, of service (a) from Burwell yard tracks to points of unloading within the plant area of the Staley Company (b) from points of loading within said plant area to Burwell yard tracks on loaded cars moved to that yard, and (c) from points of loading within said plant area *to Wabash storage or general yard tracks* on loaded cars that do not move to the Burwell yard, would result in the Staley Company receiving a preferential service not accorded to shippers generally and would result in the refunding or remitting of a portion of the rates and charges collected or received as compensation for the transportation of property in violation of section 6 (7) of the act."

As a matter of law, which only this Court may finally determine petitioner must concede that perhaps there is

some testimony that would support a finding that as to general commodities there may be services of car movements within the Staley plant which are not carrier services. But this is certainly not so as regards grain to (and from) the elevator. These ~~more~~ move direct from the railroad inspection tracks in their yards to a point just off the Wabash right of way in the Staley plant. (R. 256)

There was an important change in the facts subsequent to the last hearing by the Commission, April 23, 1940 (R. 370), and prior to the final order of May 6, 1941. This change was the discontinuance of any and all use of the interchange tracks (known as Burwell yards) and later the removal of those tracks, which no longer have physical existence. Not only was the cessation of use called to the Commission's attention in printed exceptions preceding its final report; this and the dismantling of the tracks was made the express subject of petitions for rehearing by the respondent carriers and by the Staley Company: By the Illinois Central (R. 51); the Wabash (R. 61); by Staley (R. 69). These petitions for rehearing the Commission denied by order of July 31, 1941 (R. 8) before the suit to set aside its order was instituted.

II.

In the brief for intervener-appellee, under point II, the Court's attention was invited to the effect of the provisions of the constitution and statute of the State of Illinois (supplementing Federal law), requiring inspection of grain moving by railroad and requiring also the delivery of the grain by the carrier to any elevator, physically accessible to railroad locomotives. Further, notice was called to the application of the doctrines of this Court in *Great Northern*

Railway Company v. *Merchants Elevator Company*, 259 U. S. 285, to the facts of this present case.

Petitioner is mindful that in *United States* v. *American Sheet & Tinplate Co.* case, *supra*, the Court said:

> "There is no custom or practice which has the force of a rule of law that the line-haul rate includes plant spotting service."

The Court also said:

> "It is conceded that the line-haul rate covers delivery."

The requirements of the statutes as to grain inspection and delivery in Illinois (as indeed in other states) are incompatible with any suggestion or claim that the railroads have not universally made deliveries at unloading chutes of elevators. Accordingly, whether or not the Illinois statutes and constitution may be held of binding force against the Interstate Commerce Commission, petitioner urges that the Court should accept such requirements of law, fortified by the abundant testimony of this record, as establishing that with respect to grain there is undoubtedly a general custom and usage amounting to a rule of law. This custom is that after required state inspection in railroad yards, the cars of grain are placed at the elevator under the compensation furnished by the freight rate. *This is universally true.*

In this case, Staley is being required to pay $2.50 per car charge (not imposed on any other grain concern by respondent carriers) where the railroads simply deliver strings of cars of grain clear of their property on tracks just within the plant leading to the elevator and later Staley completes the movement by car puller device to the unloading chutes.

In *Great Northern Railway Co.* v. *Merchants Elevator Co., supra,* the Court concluded, as a matter of law, that in construing a railroad tariff under Section 6 of the Act, the inspection point is not the real destination of a shipment of grain, but the elevator where the grain is subsequently unloaded. It will be noted, therefore, that the determination of what is the delivery point on grain involves construction of a statute, which is not an administrative function for the Commission but is a legal question for the courts.

After counsel for petitioners had urged this point on oral argument, counsel for the Government, in reply to a question from the bench, swept it aside with the remark that it had been raised at the last minute to confuse the record. The point was argued orally and in brief before the District Court in this case; and the facts were fully developed in the underlying record before the Commission.

III.

Petitioner would greatly hesitate to accept an interpretation of the doctrine of *United States* v. *American Sheet & Tinplate Co.,* reaffirmed in the present case to mean that the authority of the Commission to determine where transportation ends extends to declaring its termination at a point where *as a physical fact* the cars are inaccessible to the consignee at destination, or from a point of origin where the consignor could not get to the cars for loading. Particularly does this seem an undue stretching of the Court's recognition of the Commission power, when viewed in the light of the express provision of Section 1 (3) of the Interstate Commerce Act:

> "The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels,

and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

Petitioner prefers to interpret the Court's conclusion as embodying the idea that the Commission's authority does not extend to disregarding usages and requirements of law, such as grain inspection statutes, or that the Commission is relieved of the need for having some substantial evidence that the place which it designates as marking the end (or beginning) of the transportation obligation is one where the shipper may actually take delivery and receive or tender the goods. Such place cannot be within a general railroad yard, as the Commission findings herein contemplate. As a matter of good sense, it would seem the transportation obligation, under the rate, must extend to a point at least immediately beyond the carrier's right of way. As a matter of law, strictly according to the substantive provisions of Section 6 of the Act, the principles of *Great Northern Railway Company* v. *Merchants Elevator Company, supra,* this is clearly the obligation with respect to grain.

IV.

The decree of the Court below and the contention of the appellees extended to the matters herein discussed; and these seem to be overlooked by this Court, particularly in the statements quoted from pp. 4-5 of the opinion, to the effect that there is no serious contention of want of evidentiary support of the Commission's order.

Petitioner prays that the Court will reconsider its re-

versal of the decree of the Court below and approval of the underlying order of the Commission and instead shall affirm the decree in part or remand with instructions for further proceedings in harmony with the Court's final conclusions.

Chicago, April 24, 1944.

Respectfully submitted,

C. C. LE FORGEE,
LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
Attorneys for Intervener-Appellee.

AFFIDAVIT

I, John S. Burchmore, counsel for petitioner, A. E. Staley Manufacturing Company, certify that the foregoing petition is presented in good faith, is true and correct, and is not filed for delay.

JOHN S. BURCHMORE.

p. 1

SUPREME COURT OF THE UNITED STATES.

No. 453.—October Term, 1943.

The United States of America and Interstate Commerce Commission, Appellants, *vs.* Wabash Railroad Company, Illinois Central Railroad Company and Illinois Terminal Railroad Company.	Appeal from the District Court of the United States for the Southern District of Illinois.

[March 27, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The Interstate Commerce Commission, in a report and order supplemental to its main report in *Ex parte 104, Practices of Carriers Affecting Operating Revenues or Expenses, Part II, Terminal Services,* 209 I. C. C. 11, has directed appellee railroads to cancel certain tariff supplements by which they propose to eliminate charges for spotting freight cars at the doors of factories in the industrial plant of appellee Staley Manufacturing Co., at Decatur, Illinois. The Commission based its order upon a finding that the performance without charge of the spotting service would be an unlawful preference because a departure from filed tariffs, in violation of § 6(7) of the Interstate Commerce Act. 49 U. S. C. § 6(7). On appellees' petition the District Court for Southern Illinois, three judges sitting, 28 U. S. C. § 47, set aside the Commission's order, 51 F. Supp. 141. It held that the Commission's conclusion that the free spotting service rendered at the Staley plant is an unlawful preference was not supported by evidence, and that the Commission's order must be set aside because it results in discrimination contrary to §§ 2 and 3(1) of the Act, since it appears that similar free spotting service was being rendered to Staley's competitors against which the Commission had issued no order. The case comes here on appeal under 28 U. S. C. §§ 47a, 345. The principal question for our decision is whether,

as the District Court thought, the order is invalid because it results in a prohibited discrimination.

In *Ex parte .104,* the Commission initiated an extensive investigation of the service rendered by interstate railroads in spotting cars at points upon the systems of plant trackage maintained by large industries. After a study of the conditions at some two hundred industrial plants to which the rail carriers made allowances for spotting service performed by the industries, and at numerous other plants where the spotting service was rendered without charge by the carriers, the Commission found that the freight rates had not been so fixed as to compensate the carriers for such service and that the railroads by assuming to perform it, or pay for its performance by the industries, had assumed a burden not included in the transportation service compensated by the filed tariffs. And it concluded that the performance by the railroads of such service, free, or the payment to the industries of allowances for its performance by them, is in violation of § 6(7) of the Act.

The Commission, in its main report in *Ex parte 104,* recognized that by railway tariff practice in this country the rates on carload traffic moving to or from any city or town apply to so-called "switching" or "terminal" districts and entitle each industry within such a district to have the traffic delivered directly to and taken from its site. By this method of delivery and by use of private tracks of the industry the railroads are saved the expense of maintaining more extensive terminal facilities, the service and cost of delivery within the switching district being comparable to that of delivery on team tracks or sidings or at way stations. But in the case of large industries having extensive plant trackage the Commission found that cars hauled to the industry usually come to rest at nearby interchange tracks, after which the intraplant distribution of the cars is made at times and in a manner to serve the convenience of the industry rather than that of the carrier in completing its transportation service.

In determining in such circumstances the point at which the carrier service ends and the service in placing the cars so as to meet the convenience of the industry begins, the Commission stated that the line of demarcation "should be drawn at the point where the carrier is prevented from performing at its ordinary operating convenience any further service, by the nature, desires,

or disabilities of a plant", 209 I. C. C. at 34. It added, "When a carrier is prevented at its ordinary operating convenience from reaching points of loading or unloading within a plant, without interruption or interference by the desires of an industry or the disabilities of its plant, such as the manner in which the industrial operations are conducted, the arrangement or condition of its tracks, weighing service, or similar circumstances, . . . the service beyond the point of interruption or interference is in excess of that performed in simple switching or team-track delivery. . . ." 209 I. C. C. at 44-5.

The application of such a test obviously requires an intensive study of traffic conditions prevailing at the particular plant at which the spotting service is rendered. It is for this reason that the Commission, in carrying into effect the principles announced in *Ex parte 104*, has found it necessary to proceed to a series of supplemental investigations of the spotting service rendered at particular plants. Accordingly the Commission made no order on the foot of its main report, but following a series of supplemental reports, including the present one, each detailing the facts found as to the spotting service rendered at the particular plant investigated, the Commission has made cease and desist orders, applicable to that service, a number of which this Court has upheld on review. See *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *Goodman Lumber Co.* v. *United States*, 301 U. S. 669; *A. O. Smith Corp.* v. *United States*, 301 U. S. 669; *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156. In sustaining the Commission's findings in these proceedings, as in related cases, this Court has held that the point in time and space at which the carrier's transportation service ends is a question of fact to be determined by the Commission and not the courts, and that its findings on that question will not be disturbed by the courts if supported by evidence. *United States* v. *American Sheet & Tin Plate Co., supra*, 408; *United States* v. *Pan American Petroleum Corp., supra*, 158; *Interstate Commerce Commission* v. *Hoboken Mfrs. R. R. Co.*, 320 U. S. 368, 378 and cases cited.

In this, as in its earlier supplemental reports, the Commission has examined the actual conditions of operation at the industrial plant in question, here the Staley plant, and has found these conditions to be similar in type to those held sufficient to support its

orders in *United States* v. *American Sheet & Tin Plate Co., supra,* and *United States* v. *Pan American Petroleum Corp., supra.*[1] It made an extended examination of car movements within the plant area of the Staley Company, which extends for a distance of about two and a quarter miles, includes some forty buildings used in the manufacture of various products, principally from corn and soy beans, and contains approximately 20 miles of track, having 18 points at which freight is loaded or unloaded. It found that inbound cars are in the first instance placed upon interchange tracks from which they are later spotted at the points of loading and unloading, a service requiring in numerous instances two or more car movements performed by engines and crews regularly and exclusively assigned to it; that the interchange tracks are reasonably convenient points for the delivery and receipt of cars; that the movements between the interchange tracks and the points of loading and unloading are not performed at the carrier's convenience but are "coordinated with the industrial operations of the Staley Company and conform to its convenience"; that the service beyond the interchange points is in excess of that involved in switching cars to a team track or ordinary industrial siding or spur, and is consequently not a part of the transportation service which ends at the interchange tracks.

Contentions of appellees based on a formal change of control of the interchange tracks by lease from the Staley Company to appellee Wabash Railroad executed subsequent to the Commission's report in *Ex parte 104,* are irrelevant to our present inquiry. After the lease, as before, they continued to be used as interchange tracks and the controlling question is whether the movement from the interchange tracks to points of loading and

[1] The Commission examined the conditions at the Staley plant in a supplemental report rendered May 22, 1936, in which it directed the carriers, appellants here, to abandon the practice of paying allowances to Staley for the performance of the spotting service. A. E. Staley Mfg. Co. Terminal Allowance, 215 I. C. C. 656. An action to enjoin enforcement of that order was voluntarily dismissed without prejudice as a result of this Court's decision in the Tin Plate, Pan-American Petroleum, and other cases sustaining similar orders. Thereupon the payment of allowances was abandoned, and the carriers assumed the performance of the spotting services, establishing a charge of $2.27 per car, later increased to $2.50. By schedules filed to become effective December 15, 1939, the carriers proposed to cancel the spotting charge. In the present proceeding the Commission has refused to approve the proposed schedules, and has likewise refused, after having reopened the proceedings in Staley Mfg. Co. Terminal Allowance, *supra,* to modify its prior order. 245 I. C. C. 383.

unloading is a plant service for the convenience of the industry, or a part of the carrier service comparable to the usual car delivery at a team track or siding. The Commission's finding that it is a plant service is supported by evidence and must be accepted as conclusive here.

Appellees make no other serious contention of want of evidentiary support for the Commission's conclusion that the carrier service ended at the interchange tracks and the District Court found no such lack. Their contention, upheld by the court below, is that the Commission's order cannot be supported merely by the circumstances disclosed by the evidence respecting the operations at the Staley plant, but that its validity must turn upon a comparison of the conditions at the Staley plant with those at competing plants. They urge further, and the District Court so held, that, as it appears from the record that similar spotting service is being rendered at competing plants, the Commission's order compels appellees to discriminate against Staley, contrary to §§ 2 and 3(1).

This argument ignores the nature of the present proceeding which is to enforce § 6(7), not §§ 2 and 3(1). Section 6(7) prohibits departures from the filed tariffs and it is violated, as the Commission has pointed out, when carriers pay the industries for a terminal service not included in their transportation service or when they render such terminal service free of charge. This prohibition applies without qualification to every carrier and when, as here, the unlawfulness of the allowance or service is shown by the conditions prevailing at a particular industrial plant, it is unnecessary, in order to support the Commission's order, to consider whether generally similar allowances or services at other plants are, or are not, lawful under conditions prevailing there.

In this respect a proceeding under § 6(7) is unlike proceedings under §§ 2 and 3(1) which prohibit unjust discriminations and undue preferences. *United States* v. *American Sheet & Tin Plate Co., supra,* 406; *United States* v. *Hanley,* 71 Fed. 672, 673-4; compare *Merchants' Warehouse Co.* v. *United States,* 283 U. S. 501, 510-11. Since under these sections acts or practices not otherwise unlawful may be so because discriminatory or preferential, it becomes necessary to make comparisons between the different acts or practices said to produce the discrimination or preference, in

order to determine whether they are such in fact and whether they are unjust or undue. Differences in conditions may justify differences in carrier rates or service. In determining whether there is a prohibited unjust discrimination or undue preference, it is for the Commission to say whether such differences in conditions exist and whether, in view of them, the discrimination or preference is unlawful. See *Barringer & Co.* v. *United States*, 319 U. S. 1, 7-8, and cases cited.

The Commission's decision here, and its finding of a "preferential service", are not based and do not depend on a comparison of conditions at the Staley plant with those obtaining at others. By its fifth finding the Commission found that the spotting service rendered at the Staley plant was a service "in excess of that rendered shippers generally in the receipt and delivery of traffic at team tracks or industrial sidings and spurs", and hence in excess of that provided for by the tariff rates. It concluded in its third conclusion of law that the performance of this service without charge would result in receipt by the Staley Company of "a preferential service not accorded to shippers generally", and hence would result in a prohibited refunding or remitting of a portion of the filed tariff rates.

The Commission, after pointing out that evidence was introduced showing that spotting is performed without charge at various plants, some of which compete with the Staley Company, also found, "The evidence does not satisfactorily show that the circumstances and conditions under which the spotting is performed at such plants are substantially similar to those at the Staley plant. If it did it would only show the probability of existence of unlawful practices at such plants and the need for investigation in connection therewith." The District Court relied solely on this evidence to support its conclusion of lack of evidentiary support for the Commission's finding of a "preferential service not accorded to shippers generally" and to support its own finding that under the present order Staley is being discriminated against. For this reason it concluded that the Commission's order must be set aside.

We think that this is a mistaken interpretation of the Commission's findings and misapprehends their legal effect. If the Commission's reference, in its conclusion of law, to "a preferential service not accorded to shippers generally" means more than

the statement in the fifth finding of fact that the service is "in excess of that rendered shippers generally in the receipt and delivery of traffic at team tracks", it is obviously irrelevant to the present proceeding. For it could not serve to foreclose the legal conclusion to be drawn from the fifth finding that the free performance of the spotting service at the Staley plant is in violation of § 6(7) because of the traffic conditions found to prevail there. *United States* v. *American Sheet & Tin Plate Co., supra,* 406-7. But a reading of the Commission's report and findings makes abundantly clear that it was not concerned with discriminations or preferences between the Staley plant and others, such as are prohibited by §§ 2 and 3(1); that the "preference" to which it referred was not based upon a comparison of conditions at the Staley plant with those of others, but upon an application to the actual conditions at the Staley plant of the standards laid down in its report in *Ex parte 104,* in order to ascertain whether the service rendered there is in excess of that which the carriers are obliged to perform by their tariffs.

As the Commission and this Court have pointed out, a preference or rebate is the necessary result of every violation of § 6(7) where the carrier renders or pays for a service not covered by the prescribed tariffs. *Davis* v. *Cornwell,* 264 U. S. 560, 562. The Commission emphasized that no question of discrimination or preference prohibited by §§ 2 and 3 was involved in the present proceeding when it found that the evidence did not show that the circumstances and conditions under which the spotting is performed at other plants are substantially similar to those at the Staley plant, and that if it did that it would only tend to show that the practice was unlawful at the others as well. So far as the District Court found that the Staley Company was being discriminated against by the continuance of the service at other plants, its finding is irrelevant to any issue in the present proceeding which relates only to violations of § 6(7) and not §§ 2 and 3(1). In any case findings of discrimination or undue preference under §§ 2 and 3(1), as we have said, are for the Commission and not the courts. And the Commission has found that the evidence does not show that conditions with respect to the spotting service at the Staley plant and those of its competitors are similar.

While it is the duty of the Commission to proceed as rapidly as may be to suppress violations of § 6(7) in the performance of

spotting services, that is to be accomplished, as we have held, by an investigation of the traffic conditions prevailing at each particular plant where the service is rendered and not by comparison of the services rendered at different plants. Appellees complain of the Commission's long delay, some six years since the present proceeding was begun, in investigating spotting services rendered at the plants of Staley's competitors, but any of the appellees have been free to initiate proceedings to eliminate any unlawful preferences or discriminations affecting them if they so desired, § 13(1), and no reason appears why they could not have done so. There are other modes of inducing the Commission to perform its duty than by setting aside its order prohibiting a practice which plainly violates §6(7), because it has not made like orders against other offenders. The suppression of abuses resulting from violations of § 6(7) would be rendered practically impossible if the Commission were required to suppress all simultaneously or none. Section 12(1) imposes on the Commission the duty to enforce the provisions of the Act. That duty under § 6(7) would hardly be performed if the Commission were to decline to enforce it against one because it could not at the same time enforce it against all.

Reversed.

SUPREME COURT OF THE UNITED STATES.

No. 453.—October Term, 1943.

The United States of America and Interstate Commerce Commission, Appellants, *vs.* Wabash Railroad Company, Illinois Central Railroad Company and Illinois Terminal Railroad Company.	On Petition for Rehearing.

[May 8, 1944.]

Mr. Chief Justice Stone.

In its petition for rehearing appellee Staley Manufacturing Co. for the first time calls to our attention certain alleged changes in the location and arrangement of tracks on which are placed cars moving to and from the tracks of the line-haul carriers from and to Staley's industrial tracks. The changes are alleged to have occurred after the submission of the case to the Interstate Commerce Commission and are said to call for a different conclusion than that reached by the Commission as to whether the spotting service now performed by Staley is a part of the service covered by the line haul tariffs.

The Commission's report considered in detail the circumstances attending the placing of cars at what are termed the Burwell tracks, which it found to be located within the Staley plant area and to have been leased by Staley to appellee Wabash Railroad Co. Its report states that in general, cars delivered to Staley were initially placed by the carrier on the Burwell tracks and thence switched to appropriate unloading points at the Staley plant, while cars received from Staley were generally placed on the Wabash Railroad's general or storage tracks, but were also sometimes placed on the Burwell tracks. The Commission found, on sufficient evidence then before it, that "the movements between points of loading or unloading within the plant area of the Staley Company and the Burwell yard, the storage yard, or the general yard

of the Wabash . . . in all instances are, and must be, coordinated with the industrial operations of the Staley Company and conform to its convenience." And in its second conclusion of law it stated that "all services between the Burwell yard or the storage or general yard of the Wabash and points of loading or unloading within the plant area of the Staley Company are plant services for the Staley Company and not common-carrier services covered by the line-haul rates and charges of respondent carriers".

By their petitions for rehearing addressed to the Commission, appellees alleged that since March 1, 1941, three months after the case had been submitted to the Commission and about two months before it rendered its decision, the use of the Burwell tracks had been discontinued, and that those tracks had thereafter been disconnected and were being dismantled. They further alleged that appellee Wabash Railroad was in course of constructing new tracks on its own property "adjacent to its yard tracks north of the Staley plant" and "immediately north of the so-called Burwell yard" for use in the interchange of cars with Staley and other shippers, and that meanwhile the interchange was being performed from its general or storage yards. Appellees moved respectively that the Commission reconsider its decision "upon such further proceedings as may be appropriate and necessary", and that "the case be set down for a further hearing, and that . . . the Commission reconsider its order". No evidence was specified or tendered to prove before the Commission the allegations of the petitions for rehearing, and no opportunity to introduce evidence was in terms requested. The Commission denied the petitions for rehearing without opinion.

Before the District Court appellees set out the substance of their petitions to the Commission for rehearing and urged that the Commission erred in denying them. The United States in its answer admitted only that appellees had alleged in those petitions for rehearing the matters set forth; the truth of the matters alleged was not admitted by either appellant. No new evidence was taken in the District Court. That court did not pass on this question, and made no findings as to the extent or effect of the alleged change of conditions.

Nothing in the petitions to the Commission for rehearing or in the petition here affords any basis for saying that the alleged changes in conditions are of a character which would require any modification of the Commission's order or that appellees could not,

with due diligence, have brought the changes to the attention of the Commission before it made its report. They were not referred to in appellees' briefs in this Court. Compare rule 27, paragraphs 4 and 6; *I. T. S. Co.* v. *Essex Co.*, 272 U. S. 429, 431-2; *Flournoy* v. *Wiener*, No. 252, decided February 28, 1944, p. 6. Neither the Commission nor the District Court have made findings with respect to them and they were not considered by this Court or referred to in its opinion.

We find nothing in the record or in the petition before us which calls on the Court in the present proceeding to pass on the question now sought to be raised. Our decision is accordingly without prejudice to appellees' presentation in any appropriate proceeding before the Commission and the courts, of their contention that as a result of changed conditions after the case was submitted to the Commission, the spotting service as now performed is not in excess of the carriers' obligation under their tariff rates, and that its performance by the carriers without charge is therefore not unlawful.

The petition for rehearing is denied.

A true copy.

Test:

Clerk, Supreme Court, U. S.